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This book focuses on discrimination in employment, defined as the denial of equal opportunity in the labor market to qualified persons on the basis of race, color, religion, national origin, age, sex, or any other factor not related to their individual qualifications for work. The average nonwhite college graduate can expect to earn less during his lifetime than the white who has never gone beyond elementary school. Traditional patterns of discrimination have caused counselors and parents to discourage minority group youngsters from choosing "closed" occupations, and it is important that these young people be informed of opportunities and trained to take advantage of them. This pamphlet discusses significant developments affecting equal employment opportunities since 1960 at the federal and state level, and special studies and surveys, using current statistical and factual information. The origin and nature of merit employment by private employers, and government and private techniques used to implement it are described. Wherever management has established a firm policy of merit employment, the results have almost invariably been remedial and beneficial. (CH)

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Equal Opportunity in Employment

by Paul Bullock

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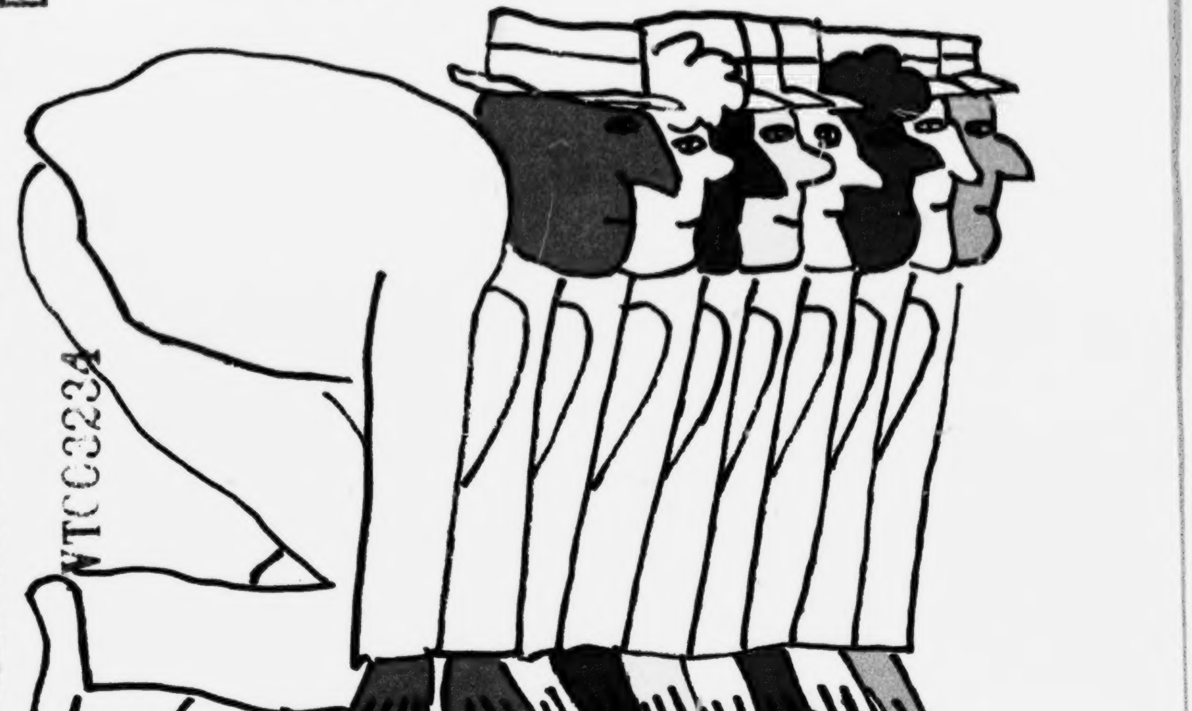

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EQUAL OPPORTUNITY
IN EMPLOYMENT

EQUAL OPPORTUNITY IN EMPLOYMENT

By PAUL BULLOCK

Edited by Irving Bernstein

Drawings by Marvin Rubin

INSTITUTE OF INDUSTRIAL RELATIONS
UNIVERSITY OF CALIFORNIA, LOS ANGELES

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Foreword

THE INSTITUTE OF INDUSTRIAL RELATIONS of the University of California was created for the purpose, among others, of conducting research in industrial relations. A basic problem is to reach as large an audience as possible. Hence, through this series of popular pamphlets the Institute seeks to disseminate research beyond the professional academic group. Pamphlets like this one are designed for the use of management, labor organizations, government officials, schools and universities, and the general public. Those pamphlets already published (a list appears on the preceding page) have achieved a wide distribution among these groups. The Institute research program includes, as well, a substantial number of books, monographs, and journal articles, a list of which is available to interested persons upon request.

This book represents a comprehensive revision and updating of *Merit Employment,* a previous publication in this series by the same author. For example, the new edition discusses the significant developments affecting equal employment opportunity since 1960, including the enactment by Congress of the Civil Rights Act of 1964, additional Fair Employment Practices measures at the state level, recent executive orders at the federal level, and special studies and surveys. All basic statistical and factual information has been brought up to date.

The author of *Equal Opportunity in Employment*, Paul Bullock, is an economist trained at Occidental College and the University of California, Los Angeles. He was a wage analyst with the National Wage Stabilization Board during the Korean war. Mr. Bullock is presently on the research staff of the Institute of Industrial Relations, and is now studying social and economic problems in the Negro and Mexican American communities of Los Angeles. He is co-author of *Hard-Core Unemployment and Poverty in Los Angeles*, a special report to the Area Redevelopment Administration, published by the Superintendent of Documents (Washington, D.C.) in October, 1965.

The Institute wishes to express its gratitude to the following persons who reviewed the manuscript: Professors Harold Horowitz and Walter Fogel of the University of California, Los Angeles, and Mr. Eddy S. Feldman, Managing Director of the Los Angeles Home Furnishings Mart. The cover and illustrations were drawn by Marvin Rubin. Mrs. Felicitas Hinman assisted with the editing.

The viewpoint is that of the author and is not necessarily that of the Institute of Industrial Relations or of the University of California.

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I. Introduction

RACIAL AND RELIGIOUS discrimination remains one of the most critical problems facing the United States today. Despite the progress achieved in recent years, many Americans find their opportunities restricted by discriminatory barriers in almost every aspect of life—economic, cultural, political, social, and educational.

Discrimination is morally wrong at any time. Moreover, in the midst of a "cold war," and in a world containing an infinite variety of creeds and skin complexions, it results in many a diplomatic and political disaster. Its elimination must be placed high on our list of priorities.

This book focuses on only one part of this problem: discrimination in employment, defined as the denial of equal opportunity in the labor market to qualified persons on the basis of race, color, religion, national origin, age, sex, or any other factor not related to their individual qualifications for work. Discriminatory practices, at all levels of the job structure, prevent the full and effective use of our manpower resources and deny equal economic opportunity to large segments of the population. The President's Council of Economic Advisers has estimated that America loses as much as $20 billion of potential national output per year "as a result of employment discrimination and poorer educational opportunities for non-whites." In its 1965 report, the council notes that nonwhites earn approximately 30 percent less than whites, even when occupations and educational levels are comparable, and that about 40 percent of the nonwhites are classified as "poor" in contrast with 16 percent of the whites.

In America, the disadvantages of a dark skin are vividly and shockingly illustrated in the recent figures comparing the lifetime earnings of a white with no more than an eighth-grade education and a Negro with a college degree. Dr. Herman P. Miller, Special Assistant to the Director of the Census, has calculated that, on the basis of 1959 incomes, the average nonwhite college graduate can expect to earn *less* during his lifetime than the white who has never gone beyond elementary school. Even in northern and western states, where discrimination is supposedly less intense than in the South, the average lifetime earnings of a white and a Negro in the respective educational categories are almost the same.

On June 4, 1965, President Lyndon B. Johnson called upon Americans to "end the one huge wrong of the American nation" and to "give 20 million Negroes the same chance as every other American to learn and grow, to work and share in society, to develop their abilities—physical, mental, and spiritual—and to pursue their individual happiness." Noting that the gap between the median family incomes and the unemployment rates of Negroes and of whites has widened in recent years, he declared that

> Unemployment strikes most swiftly and broadly at the Negro. This burden erodes hope. Blighted hope breeds despair. Despair brings indifference to the learning which offers a way out, and despair coupled with indifference is often the source of destructive rebellion against the fabric of society.... In far too many ways American Negroes have been another nation, deprived of freedom, crippled by hatred, the doors of opportunity closed to hope.

It should be emphasized that discrimination is not limited to Negroes. Many more billions of dollars of output are lost each year because Mexican Americans, Puerto Ricans, American Indians, and members of other groups are not granted full equality of opportunity in our society. Sometimes the patterns of discrimination are hidden or obscured, perhaps even undetectable; but their impact upon the economy is no less damaging. For instance, every Spanish-speaking youngster who encounters hostility or indifference in the local school system is crippled to some degree.

Nondiscrimination in employment, therefore, is essential on both moral and economic grounds. The federal government has recognized and endorsed this principle through the creation of the President's Committee on Equal Employment Opportunity, the Commission on Civil Rights, and enactment of the Civil Rights Act of

1964, with provisions for establishment of an Equal Employment Opportunity Commission. Twenty-nine states, and several municipalities, have enacted fair employment practices laws which forbid discrimination in private employment. The California law expresses the reasoning behind such legislation:

> It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons [race, religious creed, color, national origin, or ancestry] foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interests of employees, employers, and the public in general.

In addition, many business firms and unions all over the nation have voluntarily eliminated discrimination, and scores of private organizations are conducting extensive campaigns to promote the principle of nondiscriminatory employment. A number of employers and associations have adopted policies of "affirmative compliance," under which they pledge themselves to go beyond the mere letter of the law and seek to overcome the many vicious circles that are the inevitable product of centuries of discrimination.

The term "merit employment," in essence, refers to the hiring, promotion, and general treatment of workers in accordance with their individual job-related qualifications. The intent of such a policy is to eliminate discrimination against employees or job applicants on the basis of race, religion, national origin, or such other factors as age or sex which are unrelated to knowledge and skill required on the job. This book describes the origins and nature of merit employment, the governmental and private techniques used to implement it, and some of the special problems encountered. The emphasis will be on the factual record as it is available.

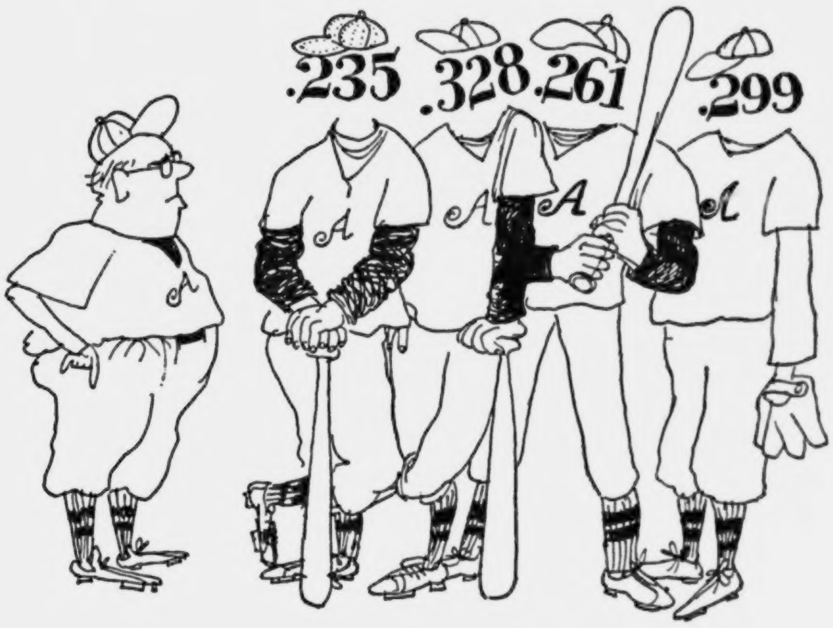
While the focus here is necessarily on the employment aspects of discrimination, it must be emphasized that the entire problem is essentially indivisible. All manifestations of discrimination are closely interrelated: inferior education for minority groups, as one example, inevitably reduces their employment opportunities; segregated housing restricts the area within which minority-group workers can effectively search for work, forces many of them to travel long distances to and from their place of employment, and denies them the chance to improve their status in the community, even when they rise in the job hierarchy. To be genuinely effective, the attack on discrimination must be launched on several fronts at the same time.

II. The Legacy of Inequality

Several years ago, a young Negro athlete named Jackie Robinson created a national sensation when he joined the Brooklyn Dodgers as first baseman. His abilities were never in dispute; baseball fans, in Flatbush and elsewhere, agreed that the Dodgers' prospects had brightened as a result of this acquisition. But Robinson was the first Negro in the twentieth century to be hired as a regular player on a major league team, the first to break through the color barrier which had kept American baseball "pure white." The color of his skin made him a controversial figure.

Negro baseball players are no longer a rarity. The barrier has been breached. Colored players are now judged, along with their white colleagues, on the basis of their batting averages and their fielding; they become controversial only when in a hitting slump. They are, in short, hired, benched, or traded solely on their merit as baseball players.

Most instances of past or present discrimination in employment do not receive publicity. Yet they are no less important to those affected, and their consequences are no less serious. Negroes, Jews, Catholics, Orientals, Irishmen, Jehovah's Witnesses, American Indians, and citizens of Puerto Rican, Mexican, and Eastern European descent—all these and many more have been dismissed from job interviews with the advice: "Don't call us, we'll call you." But the phone never rings.



1. THE IMPACT OF DISCRIMINATION

Discrimination affects many persons in American society. Discriminatory employment patterns, for example, effectively restrict the members of certain racial, religious, or nationality groups to particular types of jobs or burden them with persistent unemployment. As a result, their income is too low in relation to that of other groups and also to widely accepted standards of an adequate income, and the nation fails to make full use of their talents.

Since the end of World War II, some nonwhites have moved into higher-skilled and better-paid jobs, but whites have been upgraded at a faster rate, thus widening the economic distance between the two groups. The United States Department of Labor, in its 1965 *Report on Manpower Requirements, Resources, Utilization, and Training*, emphasizes that the unemployment rate for nonwhites aged twenty-five and older continues to be double the corresponding rate for whites (in 1964, 7 to 8 percent for nonwhites as against 3 to 4 percent for whites). Further, nonwhites tend to be unemployed longer and more often than whites: about one-third of the unemployed nonwhites are jobless for fifteen weeks or longer, as compared with one-fourth of the whites.

The plight of the Negro, in particular, has relatively worsened during the postwar period. The President has pointed out that about 29 percent of experienced Negro workers are out of work at some time during a given year. But even these figures do not suggest the full impact of unemployment upon Negroes. The Negro teenagers suffer unemployment at possibly the highest rate of any major group in American society: for example, 23 percent of teenage boys and 31 percent of teenage girls were unemployed in 1964. Tragically, Negro high school *graduates* experience unemployment at a higher rate than do white *dropouts,* a rate more than twice that of the white graduates.

The intolerable burdens which American society imposes upon the Negro are similarly reflected in figures on occupational distribution. In 1963, about three-fourths of all employed Negro workers were in the lesser-skill job classifications (laborers, farm workers, service workers, private household workers, and operatives), compared with about 36 percent of the whites. On the other hand, only one-fifth of the Negroes were in the professional and white-collar categories (professional and technical, managers and officials, farm owners and managers, salesmen, and clerical employees), compared with one-half of the whites. About 6.5 percent of the Negroes were located in the skilled crafts category, in contrast with almost 14 percent of the whites. More than one-third of Negro women were classified as "private household workers," and about 29 percent of Negro men were employed as laborers of some kind.

These differences in occupational distribution result, of course, in a wide disparity in incomes of the ethnic groups. Nationally, white men who were high school graduates had a median income of $5,600 in 1963, compared with an income of $3,821 for nonwhite graduates. For men who had completed at least some college, the median income for whites was $6,829, and for nonwhites $4,070. Between 1952 and 1963, the median income for Negro families dropped from 57 percent to 53 percent of the median for white families.

What these figures demonstrate is that, despite marked improvement in the economic and social status of nonwhites in the past quarter-century, nonwhite workers remain largely relegated to the lower levels of blue-collar employment. Two reasons are largely responsible for this pattern. First, for many decades Negroes were generally barred from other than menial jobs. Second, even in those instances where professional, white-collar, skilled, or semiskilled jobs have become available to them, they frequently lack the training, experience, and educational background needed to qualify. It is a familiar type of vicious circle: the long-time absence of economic and educational opportunities has discouraged many nonwhites from acquiring the skills necessary for higher-paid jobs.

The problems confronting the prospective Negro skilled worker are complex. He must first secure the secondary and, perhaps, college education needed for the general training which higher-level jobs require. He must then acquire the specific skills of the trade or profession to which he aspires, perhaps through an apprenticeship program. Finally, he must obtain permanent work which allows him to advance according to his individual capacities. At any one of these stages, he may be stymied by discrimination.

Other groups also encounter such barriers, though seldom as often as the Negro. Discrimination against Americans of Mexican descent is severe in certain areas of the country, specifically in the southwestern states where the vast majority of Mexican Americans are concentrated. In 1960, the Mexican American population totaled 3,464,999 in five southwestern states (Arizona, California, Colorado, New Mexico, and Texas), approximately 1.3 million in excess of the total Negro population in those states. Exactly three-fifths of the employed Mexican American men worked as farm or nonfarm laborers, service workers, private household workers, or operatives, in contrast with only 28 percent of the "Anglos." Only about 5 percent of the Mexican American men were employed in professional and technical categories, proportionately no more than Negroes and in glaring contrast with the 15 percent of Anglos in those categories.

In almost every index of economic progress, the Mexican American ranks somewhere between the Anglo on the top and the Negro on the bottom. In median family income and rate of male unemployment, for example, Mexican Americans are somewhat better off than Negroes and markedly worse off than Anglos. There is one significant area, however, in which Mexican Americans find themselves at a disadvantage even in "competition" with Negroes: their median educational attainment runs about two grade levels below that of the Negro. The median of school years completed is only slightly above the eighth grade for Mexican Americans in the five southwestern states, compared to about the tenth grade for Negroes in those states. Of course, these are quantitative measurements; the *quality* of schooling received by members of minority groups is often inferior to that received by the majority.

The Puerto Rican population of the continental United States, particularly in the New York area where many have settled in recent years, faces similar problems. In 1960, the median of school years completed by persons of Puerto Rican birth and parentage in the United States was slightly above the eighth grade, putting them on the same educational level as the Mexican Americans in the five southwestern states mentioned above. Over 28 percent of the employed Puerto Rican men worked as laborers, service workers, and private household workers, and another 39 percent were listed as operatives. Thus, the vast majority of Puerto Rican men are concentrated on the lower rungs of the blue-collar occupational ladder. Approximately 9.5 percent of Puerto Rican males in the nation's civilian labor force were unemployed in 1960, much above the average for the Anglo population.

Although overt and identifiable discrimination against Jews, Orientals, and other groups has declined in recent decades, some firms continue to exclude them from top executive, administrative, professional, and sales positions. Studies of promotional practices in industry, conducted by the Survey Research Center of the University of Michigan, have demonstrated that Jews are underrepresented in the higher executive echelons of many companies, often because of "built-in" biases in the procedure by which executives are selected.

This problem of "disguised" discrimination becomes increasingly critical as public policy and private morality combine in opposition to the more obvious forms of discrimination. Rarely, outside the South, will employers, union officials, and government representatives admit or defend the practice of racial or religious discrimination, and for this reason, its detection becomes more and more difficult. Discrimination has a long history in this country; the pervasive and destructive social and economic consequences of this deeply rooted behavior tend to remain unimproved even after their immediate cause has been eliminated. Unless positive efforts are made to offset the effects of *past* discrimination, the formal abolition of *present* discrimination will be only of limited benefit. Because of this, the official antidiscrimination agencies emphasize policies of "affirmative compliance," and many experts call for a domestic "Marshall plan" to provide at least a partial compensation to minorities that have been denied their basic rights and opportunities for nearly three centuries.

A leading advocate of this approach—Whitney M. Young, Jr., Executive Director of the National Urban League—has stated the case thusly:

> Neither the Negro nor the Urban League is asking for three hundred years of preferential treatment such as white citizens have had. We are asking for only a decade of dedicated special effort. . . . At this point when the scales of justice are so grossly unbalanced, it is impossible to balance them by simply applying equal weight.

Some whites interpret this as "preferential treatment" for the Negro and complain bitterly about what they seem to regard as prejudice in reverse. White workers who have enjoyed long-time access to apprenticeship programs, and whose children have had preference in admission to such programs, may be visibly and volubly distressed when an order is issued for revision of apprenticeship lists to permit the inclusion of Negroes. White parents who have complete freedom of movement, and who can therefore select the best available schools (public or private) for their children, may be highly critical when Negro parents ask either for the right to move out of their ghettos or, at least, to send their children to high-quality schools in traditionally white areas. In a sense, these whites refuse to accept their responsibility for the burdens which they and their predecessors, directly or indirectly, have imposed and continue to impose upon Negroes and other minorities.

It must be recognized that discrimination has undermined motivation for achievement and created a wide communications gap between the dominant majority and the residents of minority ghettos. Unless members of minority groups become aware of new economic and social opportunities and changes in the traditional attitudes of society, much of our "progress" will be abortive. Therefore, businessmen, labor leaders, and government policymakers must be concerned with the indirect and subtle, as well as the more obvious, effects of racial and religious prejudice.

There are other segments of the population which also suffer discrimination in employment. For example, employers often practice open or tacit discrimination against women. Figures on the scope of such discrimination are difficult to obtain, but it is significant that the median earnings of males in 1959 were measurably above those of females in every category of work, as shown by the 1960 census. In many cases, for instance in the professional, managerial, sales, crafts, operative, and service categories, male earnings ranged roughly from double to triple the corresponding figures for females. The Office of Manpower, Automation and Training reports that in 1962 the median income of families headed by women was about half that of families with male breadwinners. The low earnings of women in the labor force are obviously the result of two factors: (1) women tend to be heavily concentrated in low-paid occupations, and (2) even where the occupations are in the same classification, women, on the average, receive less pay than men. The Equal Pay Act, passed by Congress in 1963, is designed to protect women from discrimination in pay when they are performing the same work as men, but its impact is not yet measurable.

The older worker also suffers increasing discrimination in the American economy. Jobseekers over the age of forty find it difficult to secure steady employment in many types of industries and occupations, and the accelerated competition from young people now entering the labor market (the grown-up "postwar babies") has made their problems more complex. Section 715 of the Civil Rights Act of 1964 authorizes the Secretary of Labor to make a special study of the problem of age discrimination and report the results to Congress. The act itself, however, does not prohibit discrimination on the basis of age.

2. THE HISTORY OF DISCRIMINATION

The historical sources of discrimination are varied and complex. Obviously, a major source is the social and cultural pattern established in the general community. The feeling against immigrants, for instance, has in part grown out of a "nativist" antagonism toward a "foreign" invasion of the hitherto predominant culture. The most recent immigrant is always a frequent target of prejudice. But once he is assimilated, he is usually accepted as part of the community. Indeed, this newly accepted immigrant will sometimes adopt the attitudes of the "elite" which formerly excluded him, and will heap ridicule upon those who seek to emulate his own rise in status.

Thus the Irish Catholics were an early object of prejudice and discrimination in this country. During the nineteenth century, many American newspapers made it clear in their help-wanted ads that "No Irish Need Apply!" Professor Oscar Handlin has pointed out that the Irish in New York City were often regarded as paupers and criminals. "Forming 28 percent of the population of the city in the 1850's, these people accounted for fully 69 percent of the pauperism and 55 percent of the arrests." Though some anti-Catholic feeling has persisted to this day, Americans of Irish descent are no longer in disfavor.

Prejudice against the Negro, however, is in a somewhat different category from other types of discrimination. His case is far more complicated. Brought to America as a slave, he became part of an economic and social system which required him to remain in a subservient status. The dominant culture would not assimilate him as an equal and put forth elaborate rationalizations to explain his supposed biological inferiority. From a pragmatic standpoint, the color of his skin has always made him a more obvious target for discrimination than the Irishman, the Eastern European, and many others who have occasionally felt the lash of bigotry.

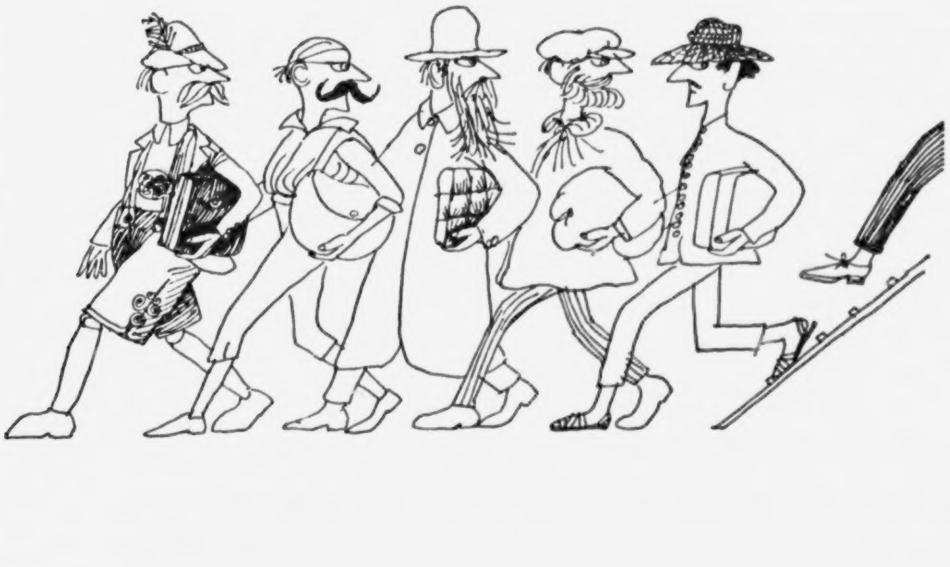
Racial and religious prejudice reached perhaps its zenith in the period following World War I. With anti-foreign feelings rampant and the Ku Klux Klan in temporary ascendency, discrimination against the nonwhite and the recent immigrant was intensified. The immigration laws were overhauled with the ill-concealed purpose of cutting off the flow of immigrants from Eastern and Southern Europe and from nonwhite areas. In addition, states such as California broadened their discrimination against Orientals.

In general, however, the position of minority groups, including the Negroes, has improved since the 1920's. Partly this is a result of government policy; for example, federal relief and economic benefits have generally been distributed without regard to race, color, or creed. It is also possible that higher educational levels and other factors have improved the attitudes of the general public.

The pressures of a tight labor market in wartime have perhaps had an even greater impact. During World War II and the Korean War, labor scarcity required industry to tap new sources of manpower and utilize the services of many who were formerly excluded from the vacant jobs. Negro workers particularly benefited from such changes in the labor market.

With growing political power, minorities in America have received increasing help from the government. Specific measures, beginning in the period preceding World War II, will be discussed in later chapters. It now suffices to point out that public policy is generally favorable to merit employment, and that significant strides in this area have been made in recent years.

This progress, specifically with regard to the Negro worker, may reflect the "rank order of discriminations" described in *An American Dilemma,* Gunnar Myrdal's monumental work on the race problem. Myrdal pointed out that white Americans discriminate most strongly against intermarriage and sexual intercourse involving white women and Negro men, and least in the area of employment, social welfare activities, and similar economic opportunities. The Negro's order of interests, on the other hand, "is just about parallel, but inverse, to that of the white man." In other words, Negroes are most interested in jobs and economic equality and least interested in intermarriage. It is precisely in this area of work opportunities, then, that the best hope exists for progress without undue conflict.



III. Minorities and the Federal Government

THE STRUGGLE FOR MINORITY rights has a long history in America. The sectional impasse over the issue of slavery, the aftermath of the Civil War with its civil rights statutes and constitutional amendments, the continuing disputes over immigration policies, the long and complex series of U. S. Supreme Court decisions in this area—all these have had an impact on the status of minorities, for good or ill.

Much of the early impetus for greater employment of minorities has come from government. Through executive orders, federal laws, special committees, state and local ordinances, and direct government employment, Negroes and other minority groups have secured many thousands of jobs which might otherwise not have been available to them.

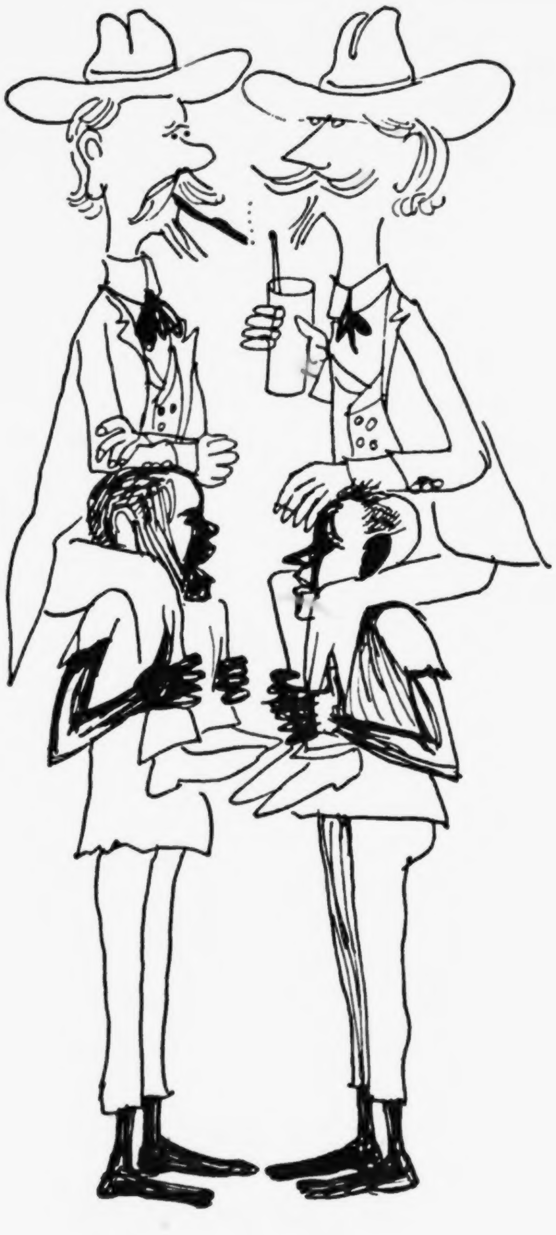
The federal government has actively promoted a policy of nondiscrimination in employment in two important ways: (1) it has promulgated the principle of merit employment throughout the federal service, with hiring and promotions placed on a nondiscriminatory basis, and (2) it has forbidden discrimination in privately owned firms holding government contracts and in other firms defined in the Civil Rights Act of 1964. In addition, various federal agencies have used educational media to strengthen the program of merit employment in private industry generally.

Governmental action, of course, is not the whole answer to the problem of discrimination. Although law gives strong support to the principle of nondiscrimination in employment, it must be supplemented by private efforts. Thus, each approach reinforces the other.

1. FEDERAL FAIR EMPLOYMENT PRACTICES MEASURES

The first "fair employment practices" (FEP) machinery was established in July, 1940, when an office was created in the labor division of the National Defense Advisory Commission to facilitate the employment and training of Negro workers. A number of federal agencies agreed to cooperate in this program.

However, continued discrimination in industry during the national defense program led A. Philip Randolph, an outstanding Negro spokesman and President of the Brotherhood of Dining Car Porters, to threaten a mass "march on Washington" in 1941 to demonstrate the grievances of the Negro workers. As a result, on June 25, 1941, President Franklin D. Roosevelt issued Executive Order No. 8802, which set up the Committee



on Fair Employment Practices within the Office of Production Management, designed to eliminate discrimination in employment due to race, creed, color, or national origin. This committee had power to investigate complaints and correct valid grievances. It could make recommendations to the President and to other government agencies. However, it had a precarious existence; it was often under fire from hostile legislators who succeeded in cutting off its appropriations in the summer of 1945. Under its aegis, some progress had been made in the direction of greater employment opportunities for minorities, but probably the greatest stimulus had come automatically from the drastic labor shortages associated with World War II.

In late 1946, President Harry S. Truman appointed a special committee to study the problem of civil rights and make recommendations for further implementation of an antidiscrimination program. The Committee on Civil Rights reported in 1947 that discrimination in employment was a serious problem throughout the country, and particularly within the District of Columbia. It cited a wartime statement of a ranking D. C. official that "Negroes in the District of Columbia have no right to ask for jobs on the basis of merit," on the grounds that whites own most of the property and pay the bulk of municipal taxes. It also noted that Negroes received discriminatory treatment in private employment, with three-fourths of all Negro workers in Washington classed as domestics, service workers, or laborers in 1940.

The committee unanimously recommended the enactment of a federal fair employment practices act prohibiting all forms of discrimination in private employment based on race, color, creed, or national origin. It also endorsed the enactment of similar laws by the various states, and the issuance by the President of an order against discrimination in government employment with adequate machinery for enforcement.

These recommendations were greeted by both cheers and jeers in the legislative chambers and elsewhere. In February, 1948, President Truman endorsed them in a special message to Congress, urging, among other things, the enactment of a federal fair employment practices law. At approximately the same time, the President issued an order for the elimination of racial and religious discrimination in federal employment and the establishment of a fair employment board within the Civil Service Commission. The President also required equality of treatment for all persons in the armed services, regardless of race, color, creed, or national origin.

On January 18, 1955, President Dwight D. Eisenhower issued Executive Order No. 10590 which enunciated an official policy of nondiscrimination in federal employment, made department heads responsible for carrying out the directive, and created the President's Committee on Government Employment Policy. The task of this committee was to implement a nondiscrimination policy by hearing and judging individual complaints, by circulating information to the various agencies, and by sponsoring conferences to discuss the problems involved. On March 6, 1961, President John F. Kennedy issued Executive Order No. 10925, which abolished the Committee on Government Employment Policy and transferred its functions to the newly established President's Committee on Equal Employment Opportunity.

The most recent reports of this committee indicate that the proportion of Negroes in the middle and upper grade jobs in federal employment (Civil Service grades 12 through 18) had risen since initiation of this program. Between 1961 and 1964, Negro employment in these categories had increased by about 125 percent. The percentage of Mexican American employees in these brackets, most notably within the five southwestern states previously mentioned, had also increased. However, we should not deceive ourselves by overemphasizing percentages of this type. The percentage increases are impressive largely because the number of Negro and Mexican American employees at these higher grade levels has been, and remains, comparatively small. The vast majority of Negroes and Mexican Americans in governmental service is still clustered in the lower brackets, despite the measurable improvements over the past few years.

In many communities, government service is the foremost source of white-collar employment for minority groups. The Los Angeles County Commission on Human Relations reported a few years ago that in one local government department approximately half of the clerical staff consisted of Negro, Mexican American, and Oriental personnel. The commission estimated that a large percentage of white-collar job opportunities for such groups was concentrated in the four governmental jurisdictions: federal, state, county, and city.

The newest, and perhaps the most significant, effort undertaken by the federal government in the field of merit employment is the establishment by Congress (effective July 2, 1965) of the Equal Employment Opportunity Commission, as provided by Section 705 of the Civil Rights Act of 1964. The commission, composed of five members appointed by the President, and presently chaired by Franklin D. Roosevelt, Jr., is empowered to take action against discrimination in private employment whether based on race, color, religion, sex, or national origin. Complaints may be initiated either by aggrieved individuals or by members of the commission itself when they have reason to believe that a violation of the law has occurred.

Title VII of the Civil Rights Act makes it illegal for an employer

> 1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> 2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

This section applies equally to private employment agencies in referrals to jobs, and to labor unions in membership and hiring-hall policies. Discrimination is prohibited in apprenticeship and on-the-job training programs, thus supplementing and strengthening a previous regulation to the same effect issued by the United States Department of Labor with respect to such programs registered with the department's Bureau of Apprenticeship and Training (29 CFR Part 30, effective January 17, 1964, printed in the Federal Register, December 18, 1963, Title 29—Labor).

These provisions differ from other legislation (for example, most of the state "fair employment practices" laws) with respect to their application to discrimination on the basis of "sex." Though the original draft of the 1964 Civil Rights Act contained no such provision, an amendment to this effect was added in the House of Representatives and was retained in the final version. Since there is little precedent for this feature of the legislation, its precise interpretation and application in practice remain unclear at this writing. It would appear that the amendment must be read in connection with sections 703 (e) and (h) of the same act, which permit employers and organizations to consider religion, sex, or national origin "in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise" and to apply different standards of compensation or conditions of employment (for instance, under a seniority or merit system) "provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin. . . ."

Obviously, the question hinges on the possible relationship between the sex of the applicant and the necessary qualifications for the job. If an employer can demonstrate that the job requires a degree of physical strength which women ordinarily do not possess, the employment of men only would presumably not be in violation of the act. In those instances where physical differences between men and women are irrelevant to job performance, it seems clear that applicants of both sexes must be considered on an equal basis. At this moment, it is somewhat unclear how this amendment would apply to certain types of jobs which have traditionally been reserved for women, thus far without a demonstrable connection between sex and job qualifications. A few examples of employees in such occupational categories are secretaries and stenographers, airline stewardesses, maids, telephone operators, and nurses. It seems likely that qualified male applicants for such positions should receive consideration by potential employers on the same basis as females.

The other provisions of Title VII of the Civil Rights Act are essentially similar to those already in effect in "fair employment practices" legislation, with a few exceptions to be discussed later. The new Equal Employment Opportunity Commission has broad powers to cooperate with other governmental agencies (national, state, and local), to establish regional offices, issue regulations, provide technical assistance, refer appropriate matters to the Attorney General, require the keeping of records, and prevent unlawful employment practices through a variety of means. The act spells out in detail the relationship of the federal commission to the various state and local FEP commissions entrusted with the responsibility for enforcement of antidiscrimination laws. It stipulates that whenever an individual complaint of discriminatory practices is made in a state or locality having such laws, the charge cannot be filed with the Equal Employment Opportunity Commission "before the expiration of sixty days after proceedings have been commenced under the state or local law, unless such proceedings have been earlier terminated. . . ." The 60-day period is extended to 120 days during the first year after the effective date of a state or local law. When a finding of discrimination is made by a member of the commission itself, the commission notifies the appropriate state or local agency, which is then given at least 60 days, upon request, to remedy the alleged unlawful practice before the federal authority asserts its jurisdiction. Again, the 60-day period is extended to 120 days under the circumstances noted above.

After a charge has been properly filed under Title VII, either by an aggrieved individual or by a commission member, the employer, employment agency, or labor organization involved is notified and the commission proceeds to investigate. At this stage, all proceedings are confidential, and heavy penalties may be imposed on any staff member who releases information in violation of provisions under this title. Once it is determined that there is reasonable cause to believe that the charge is true, the commission tries to eliminate the practice by informal methods of conciliation and persuasion, with the requirement of complete confidentiality remaining in effect. If, within thirty days after the filing of the charge or the expiration of any other relevant period identified in the act, the commission is unable to secure voluntary compliance, the aggrieved person will be so notified and he may then initiate (within thirty days) a civil action in the district court against the party accused of discrimination. Under certain circumstances, the court may appoint an attorney for the complainant, omit the payment of costs, and permit the Attorney General to intervene. In those cases where the initial charge was filed by a commission member, the court suit may be brought by any person allegedly affected by the unlawful practice.

If the court finds that the respondent has engaged in the unlawful practice as charged, it may enjoin him from any further actions of this type and order such relief for the aggrieved party as it deems appropriate, including reinstatement in the job and back pay. However, no reinstatement can be ordered in any instance where the complainant was denied, or discharged from, employment, or expelled or suspended from a union, for reasons other than discrimination. Wherever the employer, employment agency, or labor organization fails to comply with a court order issued in connection with the civil suit under this section of the Civil Rights Act, the commission may then initiate legal proceedings to compel compliance.

Possibly the most important section of Title VII is Section 707, which empowers the Attorney General to bring civil action in the courts whenever he "has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described. . . ." Under procedures defined in the act, the Attorney General may request that a special three-judge court be designated in the appropriate circuit of the federal district courts to hear such cases, which are to be given priority on the court dockets. Even where the Attorney General fails to file such request, the chief judge of the district (or, in some cases, the circuit) is ordered to appoint a judge who will hear the case at the earliest practicable date.

All employers, employment agencies, and labor organizations subject to the provisions of this act are required to keep and make available such records as the commission may require and prescribe. Record-keeping requirements are eased, however, for those subject to state and local FEP laws and federal regulations governing government contractors. Organizations responsible for the administration of apprenticeship or other training programs must be prepared to provide detailed records, including (but not limited to) a list of all applicants, the chronological order of their applications, and a description of the methods by which participants in such programs are selected. Under certain limited conditions, the commission may grant relief from these requirements. Where appropriate, the commission may cooperate with, and utilize the services and facilities of, state and local antidiscrimination agencies in the administration of its responsibilities under the act. Of course, the commission is given the usual powers to compel the submission of necessary records and the attendance of witnesses.

All those covered by the act are required to post, on bulletin boards and in other conspicuous places throughout the establishment, notices of its major provisions and information relative to the filing of a complaint. The commission itself will prepare, or must approve, the form of such announcements.

Certain exemptions and exceptions are provided in the act. For example, Title VII does not apply to employers with respect to the employment of aliens outside of the jurisdiction of the United States, or to religious organizations with respect to the employment of persons performing work in connection with religious activities, or to educational institutions with respect to the employment of persons doing work related to educational activities. In like manner, any school may hire employees of a particular religion exclusively if it is administered by a religious society or is established to propagate that religion. The general exception for cases in which religion, sex, or national origin are "bona fide occupational qualifications" has been mentioned previously.

In addition, persons who are members of the Communist Party or other organizations officially designated as "subversive" receive no protection from this legislation, nor do its provisions apply to those who are adjudged to be "security risks." Also, instances where legitimate preferential treatment in employment is given to Indians living on or near a reservation are excepted from coverage. However, nothing in the language of the title can be interpreted as requiring anyone to grant preferential treatment to any individual or group because of race, color, religion, sex, or national origin "on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed by, any apprenticeship or other training program, in comparison with the total number of percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area." This provision is intended to make clear that the act does not in any way sanction "quotas," by which employers and others might be expected to hire certain proportions of minority-group members as evidence of nondiscrimination.

The act defines an employer as anyone in an industry affecting commerce "who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year," or any agent of such person. Governmental jurisdictions, Indian tribes, and bona fide private membership clubs are excluded from this definition. However, during the first year after the effective date of the title (July 2, 1965), "employer" is defined as a person having one hundred employees or more; during the second year, seventy-five employees will be the break-off point; and during the third year, it will be fifty employees. Thus, the criterion of "twenty-five or more employees" will become applicable on July 2, 1968.

The terms "employment agency" and "labor organization" are defined broadly so as to encompass nearly all such organizations which in any way affect commerce among the states. In like measure, the phrase "industry affecting commerce" is given a wide application, referring to "any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry 'affecting commerce' within the meaning of the Labor-Management Reporting and Disclosure Act of 1959."

It should be noted that, in addition to the prohibition against sex discrimination, Title VII differs from enforceable state and local laws in other respects. A major difference is that the Equal Employment Opportunity Commission does not have power to issue cease-and-desist orders against those who have been adjudged to be in violation of the law and have refused to adjust their policies voluntarily. Under the federal law, suits against the offending parties must be brought by the individual or individuals aggrieved. But, as pointed out before, this omission is at least partially offset by the provisions of Section 707 which enable the Attorney General to initiate a civil suit whenever he finds a pattern of discrimination.

The federal measure also contains clarifying language designed to exclude from coverage situations in which members of minority groups are denied particular jobs for reasons not related to race, color, religion, sex, or national origin as such. As previously indicated, the employer may maintain different standards of compensation or conditions of employment, or piece-work and incentive pay systems, or differences in pay among plants, provided that there is no intention to discriminate illegally.

Further, the act makes it clear that the employer may give, and use the results of, professionally developed personnel tests to place employees, and may compensate men and women differentially where that practice is specifically permitted by the Fair Labor Standards Act. The implied purpose of the first proviso is to guarantee the legality of standard tests which are administered on a nondiscriminatory basis but sometimes have the effect of screening out members of minority groups who suffer from educational or environmental deficiencies.

In summary, the passage of the Civil Rights Act of 1964 means that some employers will be subject to the provisions of at least three measures relating to discrimination in employment: the state or local fair employment practices laws and regulations, Title VII of the Civil Rights Act. and executive orders governing contractors with the government. In almost all instances, the policies and procedures required by the various agencies are sufficiently consistent that little duplication or conflict is likely. It is conceivable, however, that separate investigations of a particular firm (or other organization) will occasionally be conducted by two or more government agencies, based either on a single complaint or on a number of different complaints.

2. GOVERNMENT CONTRACTS

Two executive orders issued during World War II established the policy of requiring nondiscrimination in businesses holding government contracts. The first committee specifically created to carry out this program was the President's Committee on Government Contract Compliance, set up by President Truman in December, 1951. The committee, comprising representatives of the major contracting agencies and six other members named by the President, was empowered to examine the procedures of federal departments, confer with responsible officials, and make recommendations for the prevention or elimination of discrimination in contracting firms.

The functions performed by this committee were later assumed by the President's Committee on Government Contracts, established by President Eisenhower on August 13, 1953. This second committee had broader powers than its predecessor. It received complaints and transmitted them to the appropriate contracting agency for action, and initiated and reviewed surveys of contractors. In addition, it conducted and encouraged educational programs in industry and among private groups, in cooperation with state, local, and nongovernmental instrumentalities.

The nondiscrimination clause in government contracts was further broadened in 1954 by Executive Order No. 10557, which forbade discrimination in all aspects of personnel practices, including employment, promotions, transfers, recruitment, layoffs, rate of pay, apprenticeship programs, and many others. Under this clause, the contractor is obligated to post, in conspicuous places, the notices of this nondiscrimination policy and to insert similar provisions in his subcontracts.

In March, 1961, President Kennedy issued Executive Order No. 10925, which established the President's Committee on Equal Employment Opportunity as a successor to President Eisenhower's Committee on Government Contracts. The President's Committee on Government Employment Policy (established by President Eisenhower in 1955) was abolished, and its responsibility to prevent discrimination in federal government employment practices was transferred to the new committee. On this committee the Vice President served as

Chairman and the Secretary of Labor as Vice Chairman, but the major administrative functions were performed by the Executive Vice Chairman designated by the President. Executive heads and representatives of several major government departments, together with spokesmen for business, labor, and community groups, served as members. On September 24, 1965, President Lyndon B. Johnson issued Executive Order No. 11246, abolishing this committee and transferring its functions to the Department of Labor and the Civil Service Commission. The Secretary of Labor has established the Office of Federal Contract Compliance within his department to administer the relevant provisions of the order.

The government's antidiscrimination program has broad application to contractors and subcontractors. An equal opportunity clause must be inserted in each contract between an agency and a private firm, and between the prime contractor and all subcontractors. This requirement applies to purchase orders and bills of lading, and Executive Order No. 11246 (and, earlier, Executive Order No. 11114) extends it to construction contracts which are financed or assisted in any way by the federal government. The Secretary of Labor may, by regulation, exempt certain classes of contracts, subcontracts, or purchase orders from the requirements of the order, namely: (1) instances where the work is to be performed outside the United States and no recruitment of domestic American workers is involved; (2) contracts for standard commercial supplies or raw materials; (3) contracts or orders involving less than specified amounts of money or numbers of workers; or (4) subcontracts below a specified tier. The Secretary may also exempt a particular agency from inserting any or all of the otherwise stipulated provisions in contracts, subcontracts, or orders, in specific cases where he determines that special circumstances require the exemption.

Under a directive effective October 24, 1965, the Secretary of Labor has reaffirmed all rulings and interpretations of the President's Committee on Equal Employment Opportunity which are not inconsistent with the provisions of Executive Order No. 11246. Thus, the requirements of the order apply only to first- and second-tier subcontractors (the subcontractor of the prime contractor and his own subcontractor), except in the case of construction projects. Certain types of contracts or subcontracts are exempt from the provisions of the order: transactions of $10,000 or under (except bills of lading), contracts for standard commercial supplies or raw materials not exceeding $100,000, contracts outside the United States, certain types of government property sales contracts, and contracts and subcontracts for an indefinite quantity, provided that they will not extend beyond one year and are not expected to exceed the maximum amounts stated above.

All nonexempt contractors are required to file, and must also cause their subcontractors to file, such compliance reports as the Secretary of Labor shall prescribe, using standard forms which can be obtained from the contracting agency or, in the case of a subcontractor, from the prime contractor. The agency or the Secretary may require a bidder or a prospective contractor or subcontractor to file a statement affirming that the practices of a labor union in the plant are nondiscriminatory, and to have the statement signed by a representative of the union. If the union refuses, the employer must certify that the union will not comply.

Routine or special compliance reviews of employer practices are conducted by the responsible federal agencies or by the Secretary of Labor to ascertain whether the requirements of the executive order are being observed. In such reviews, firms are asked to provide information on the number of minority-group employees by type of job held. Any employee of a contractor or subcontractor who believes himself to be the victim of discrimination may file, or have filed for him by an authorized representative, a written complaint not later than ninety days from the date of the alleged discrimination. These complaints may be filed with the contracting agency, or with the Department of Labor, which carries out an investigation. The respondent may request a public hearing if he feels it is in his interest.

All nonexempt contracts must contain clauses committing the contractor to pursue nondiscriminatory policies, post notices in all plants, take "affirmative action" to insure nondiscrimination, mention the equal opportunity policy in newspaper and other advertisements for employees, report necessary information and make records available to the government, comply with all rules of the executive order, obtain similar pledges from subcontractors, and notify labor unions of these obligations. The requirement of "affirmative action" means that employers must clearly communicate the nondiscrimination policy to all responsible persons in the establishment or in recruitment agencies, and must demonstrate a willingness to hire and promote workers on individual merit regardless of race, color, creed, national origin, or similar factors. Aside from the actions indicated above, this requirement might imply the utilization of local sources of worker referrals which are in regular contact with members of minority groups, such as the Urban League and the State Employment Service. Affirmative action does *not* require the employer to lower employment standards for minority-group applicants or to establish "quotas" for the hiring of such persons.

The legal sanctions for failure to comply have seldom been used, though government representatives state that there is no hesitation to use them where absolutely necessary. Reviews of general employment practices at a given firm can be initiated either in connection with an individual complaint, or without a complaint, on the initiative of a contracting agency or the Secretary of Labor. When evidence of noncompliance is found, efforts are made through conference and conciliation to correct violations affecting any or all employees in the establishment. If the contractor resists compliance even upon the completion of conciliation, one or more of the following sanctions can be imposed:

1) Publication of the names of noncomplying contractors;
2) Recommendation to the Department of Justice that ap-

propriate legal measures be initiated against violators, including the enjoining of persons or groups seeking to prevent compliance;

3) Recommendation to the Equal Employment Opportunity Commission or the Department of Justice that proceedings be instituted under Title VII of the Civil Rights Act of 1964;

4) Recommendation to the Department of Justice that criminal proceedings be brought for the providing of false information to the agency or the Secretary of Labor;

5) Cancellation, termination, or suspension, in whole or in part, of the contracts or grants;

6) Provision that no further contracts, or assistance to contracts, will be extended to noncomplying contractors until proof of compliance is provided.

Despite the availability of these sanctions, the various contract compliance officers and agencies have found it wise and expedient to rely mainly on educational methods. Of course, the enforcement problems are quite complex. On the one hand, the antidiscrimination program operates in a "cold war" atmosphere in which government agencies are frequently under pressure to secure the speedy and efficient completion of contracts. This may limit the extent to which they are prepared to withhold or withdraw contracts from violators. On the other hand, a shortage of qualified workers from minority groups sometimes makes it possible for contractors to assert, sincerely or insincerely, that they are willing to hire such applicants but can find none.

A major part of the antidiscrimination program has centered upon the so-called "Plans for Progress," which represent voluntary agreements between the government and businessmen under which the latter pledge to adopt affirmative policies going beyond the strict letter of the law. President (then Vice President) Johnson stimulated and encouraged the organization of the "Plans for Progress" program in 1961, and in 1963 he established an Advisory Council to assure greater participation by business and industry. Of approximately three hundred participating companies, some are not government contractors and, therefore, technically not subject to the requirements of the executive order. All companies, however, have committed themselves to vigorous and imaginative implementation of nondiscrimination policies. "Plans for Progress" companies are required to file the same compliance reports as other companies covered by the order. The President's Executive Order (No. 11246) of September 24, 1965, continues the "Plans for Progress" program, and also provides for the issuance of Certificates of Merit to employers or unions found to be in full compliance with the order. The Secretary of Labor may exempt such parties from the reporting requirements of the order if they hold Certificates of Merit which have not been suspended or revoked.

The same Executive Order makes the various governmental agencies and the United States Civil Service Commission responsible for the prevention of discrimination in all federal employment. Heads of executive departments and agencies are enjoined to maintain positive programs of equal employment opportunity. All those subject to the provisions of the order, whether in government or in industry, are expected to implement nondiscrimination policies affirmatively, thus going far beyond the mere issuance of formal statements or declarations of general purpose.

IV. State and Local FEP Measures

TWENTY-NINE STATES, plus the District of Columbia and Puerto Rico, now have fair employment practices legislation providing for administrative hearings and judicial enforcement of the agency's or official's orders: Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Hampshire, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Washington, Wisconsin, and Wyoming. The states of Delaware, Idaho, Maine, Montana, and Vermont make discrimination a misdemeanor but maintain no administrative commissions with enforceable powers. Oklahoma and West Virginia have strictly voluntary measures without legal penalties for acts of discrimination. The typical legislation covers private employers and, in most cases, government jurisdictions; however, except in Alaska and Wisconsin, very small firms are not covered.

A number of major cities have active FEP commissions, including Philadelphia, Cleveland, Minneapolis, St. Paul, Baltimore, and Toledo. Some other municipalities have established such commissions in the past, but have terminated them when enforceable state laws took effect. Local agencies to combat all aspects of discrimination by community education and fact-finding, such as the Los Angeles County Commission on Human Relations, also operate in several areas.

The typical enforceable law prohibits discrimination in hiring, firing, promotions, or working conditions, and also forbids employment agencies to discriminate in accepting or referring applicants. Labor unions are regulated similarly in their admission policies. Questions and statements in application forms, advertisements, brochures, or interviews relative to race, religion, color, creed, or national origin are specifically outlawed. It should also be noted that twenty-four states, plus Puerto Rico, prohibit discrimination based on age, and five states ban discrimination based on sex.

The law is administered by a state commission which receives and investigates complaints filed by those alleging discrimination. Sometimes the commission is empowered to initiate an investigation itself. The commission relies primarily upon education, persuasion, and conciliation in administering the nondiscrimination policy. However, if voluntary methods fail, the commission may issue a cease-and-desist order against the violator. If this order is defied, it may then petition for a court ruling to compel compliance. Relatively few court orders have been issued under the state and local statutes; most cases are settled in an earlier stage of processing.

When a complaint of discrimination is received, an investigator is assigned to determine the facts in each case. Complaints may be filed by the aggrieved person himself, or in many cases by the commission or an individual commissioner, a designated public official, an employer whose employees refuse or threaten to refuse to comply with the law, or anyone with knowledge of discriminatory practices or concern about the problem. Often the entire employment policy of the firm is reviewed.

1. PRE-EMPLOYMENT DISCRIMINATION

Most of the fair employment practices laws forbid any inquiries on employment forms or in interviews which would indicate a discriminatory policy. For example, the Minnesota statute contains a reasonably typical clause:

> Except when based on a bona fide occupational qualification, it is an unfair employment practice:
>
> 8) for an employer, employment agency, or labor organization, before an individual is employed by an employer or admitted to membership in a labor organization, to
>
> a) require the applicant to furnish information that pertains to the applicant's race, color, creed, religion or national origin, unless, for the purpose of national security, information pertaining to the national origin of the applicant is required by the United States, this state or a political subdivision of the United States or this state;

> b) cause to be printed or published a notice or advertisement that relates to employment or membership and discloses a preference, limitation, specification, or discrimination based on race, color, creed, religion or national origin.

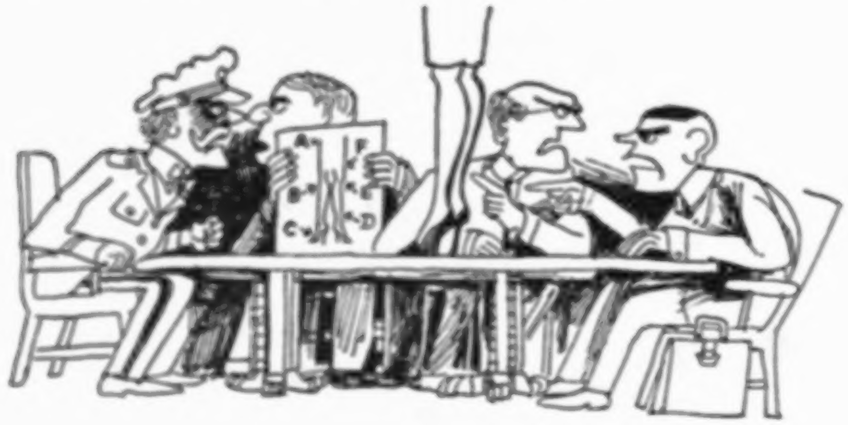
By official interpretations, such a clause rules out not only the obvious questions regarding religion, race, national origin, or color, but also more subtle practices of discrimination. For instance, the firm may lawfully request the employee to submit a photograph of himself *after* employment, but not before. He may be asked if he is a citizen of the United States, but the question must not be phrased so as to ascertain the country of his birth. The questionnaire may inquire into previous names used by the applicant which have not been changed by court order, but not into the original name when it has been legally changed. The applicant may lawfully be required to list the organizations of which he is a member, provided that their name or character does not indicate the race, color, religion, national origin, or ancestry of the members.

Various other questions concerning education, experience, character, language, color of eyes and hair, and address may be asked so long as they do not elicit information on the applicant's race, religion, or nationality. Questions concerning religion, color of skin, birthplace of applicant or of his parents and relatives, or nationality and descent are always illegal except when required by security regulations or permitted by the commission.

A few specific examples will demonstrate how state and local agencies operate to eliminate discrimination in hiring. A young Negro in California had tried to file job applications with several service stations of a prominent oil company and had uniformly been turned down. He registered a complaint with the state's FEP commission, and an investigation showed that the company's standing practice had been to accept all applications from potential employees. However, at the time not one of the firm's 180 attendants in 36 stations was a Negro. The commissioner to whom the case was assigned then persuaded the company to accept the application, evaluate it, and employ the Negro if he were qualified. It was found that his qualifications were above average and he was given the job.

A more comprehensive application of the authority and influence of the California FEPC is illustrated by an agreement signed in 1964 between the commission and the Bank of America, the largest banking chain in the state. The banking firm agreed to make affirmative efforts to expand job opportunities for Negroes and members of other minorities; the commission makes periodic reviews of Bank of America's employment practices to ascertain the extent of progress in this direction. The firm has undertaken intensive recruitment programs in minority-group areas and maintains uniform hiring and promotional standards for all personnel. Moreover, it makes extra attempts to recruit qualified workers from those groups which have traditionally experienced discrimination and may not be aware that jobs are available in the banking industry.

A New York case some years ago involved a young Negro girl who had been referred by the Urban League to an airline company that had advertised for flight hostesses. She passed both the required physical examination and intelligence test, but was rejected for the job. She attributed her rejection to discrimination.



The company answered that she was rejected because of appearance, specifically a "poor complexion," "unattractive teeth," and legs that were "not shapely." The investigating commissioner inquired into the case, and with staff members he interviewed the girl and observed her appearance. "We are unanimous in our opinion that respondent's objections to complainant's physical appearance are not factually accurate and cannot be accepted as valid reasons for her rejection." In nonlegal language, the commissioner and his aides made an official finding that, among other things, her legs were "shapely."

He decided that the girl met all the qualifications required for the job of airline hostess and that the reason for her rejection was simply her color. In confirmation of this opinion, he cited the fact that the airline had never hired a Negro in any flight capacity, including that of hostess. When conciliation efforts failed, the commissioner ordered a public hearing. Hearings were adjourned on condition that the airline make interim reports on its progress in effecting a nondiscriminatory policy.

Finally, the airline made a definite commitment to hire a Negro girl as flight hostess by May 12, 1958, and the complainant then withdrew her complaint conditional on such hiring. The company hired another Negro girl and placed her in training school, but a physical examination revealed a disability which would be aggravated by active flight duty. Subsequently, the commission was informed by the airline that it had hired a Negro girl who had successfully completed the training course and is now regularly employed as a flight hostess.

Some of the cases encountered by FEP agencies involve unusual and delicate problems. In Minnesota, the manager of an employment agency contacted the Fair Employment Practices Commission and informed it that an employer had requested him to recruit young ladies with an oriental appearance to fit the motif of a new office. The agency wanted to place an ad reading: "Look oriental? New office with oriental motif needs receptionist and PBX operator to fit in with decor." The commission decided that employers have a right to create a particular kind of atmosphere in an office and thus okayed the ad, on condition that specifications of this type must not be used as a pretext for excluding persons of different racial, religious, or nationality backgrounds.

The requirement of nondiscrimination applies equally, of course, to public agencies. The public employment services, for instance, are generally mandated to refer job applicants without regard for race, color, religion, or national origin. As early as 1950, the California Department of Employment established a minorities program on a statewide basis through creation of two Minority Employment Advisory Committees (one in the northern area and one in the southern). In 1951, this program was further implemented by an order from the director of the department, setting forth procedures for elimination of nonperformance specifications in job orders through persuasion. When an employer declines to lift such specifications, the regulations require that his order be cancelled and referrals refused. Explanatory manuals are furnished to every local office. Minority specialists in the area offices and in each of the local offices have the responsibility of orienting department employees and implementing the basic policy.

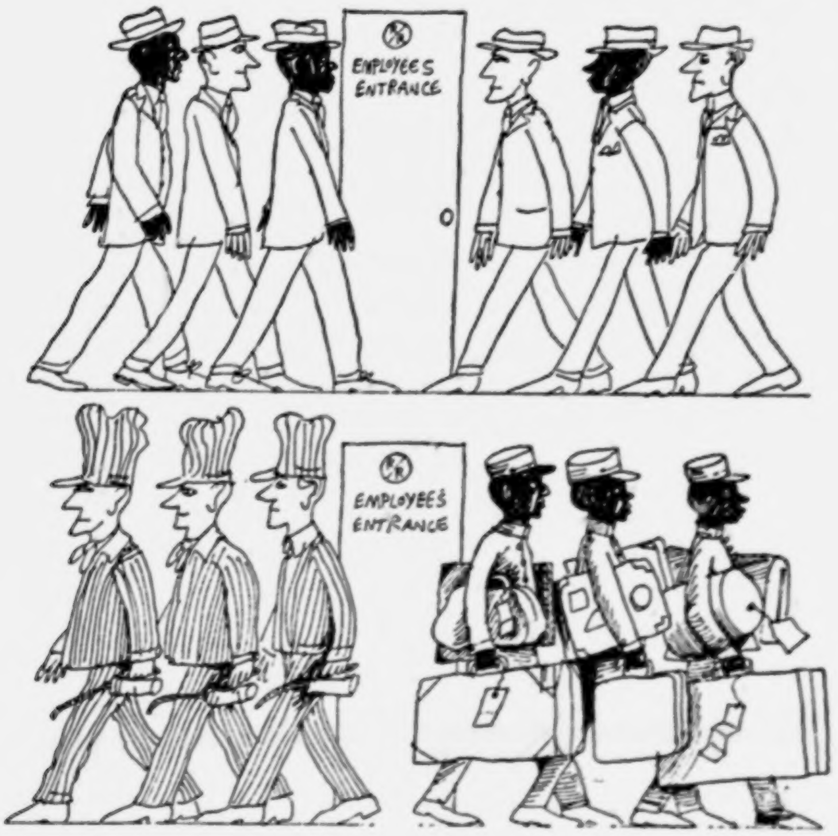
2. ON-THE-JOB DISCRIMINATION

FEP laws cover racial or religious discrimination after an employee gets the job, as well as before. Promotion, discharge, availability of facilities, and similar factors must be administered on a nondiscriminatory basis. Again, the FEP agency must look behind the overt or stated policies of the firm and make sure that segregation is not being practiced indirectly.

For example, the New Jersey Division on Civil Rights received a complaint from a Negro worker in a company which had a policy against interdepartmental transfers. Negroes were then concentrated in a single department, and the company policy thus had the effect of restricting their upgrading opportunity. The company often hired new workers to fill vacancies. The division reviewed the promotion policies of the firm and persuaded the company to change its position. The Negro employees could thereupon be advanced to the higher-level jobs if they were qualified.

In a somewhat different type of case, a Negro custodian in California, who had worked for the same government agency for seventeen years, complained to the FEPC that his supervisor had harassed him over the previous two years by failing to provide him with adequate janitorial equipment, and that this reflected a prejudice against Negroes. Investigation showed that there was a basis for these allegations, and assurances were given that such treatment would not recur.

Quite frequently, the problem confronting the state fair employment practices commission, or other agencies working in this field, is not merely one of making jobs available to minority groups, but rather one of establishing opportunities for them in specific skilled jobs. A great many firms use Negroes or other minority group



members for low-paid menial jobs, but will neither hire nor promote them to skilled classifications. The mere presence of Negroes in the work force, therefore, does not necessarily indicate an absence of discrimination. If the company policy confines Negroes to certain jobs and effectively excludes them from others, the commission seeks the removal of such barriers.

As an example, the New York State Commission for Human Rights (formerly the New York State Commission Against Discrimination) and the New Jersey Division on Civil Rights (formerly the New Jersey Division Against Discrimination) conducted a joint study of railroad employment in those two states. Their survey ascertained that Negroes have found the least employment in the operating branches of that industry, and the most extensive employment in nonoperating transportation, as chefs, porters, waiters, station attendants, common laborers, and similar jobs.

In June, 1957, in the category of "Transportation Exclusive of Operating," 29.6 percent of the 17,302 employees were Negroes; in the category of "Operating Transportation," less than 1 percent (118) of the 20,099 employees were Negroes. The conclusion of the report states bluntly:

> With the information before us, we see clearly that the historic assignment of Negro workers to menial tasks in the railroad industry continues to be a fact; at the same time, the appearance of some Negro workers in the category of operating transportation, where in the past they have not been employed, indicates plainly the possibility of a wider extention of opportunity for the Negro workman here, as in other categories.

3. THE IMPACT OF FAIR EMPLOYMENT PRACTICES LEGISLATION

It is difficult to measure the precise impact of a fair employment practices law. In order to determine its effect, we must obtain information on the increase in employment opportunities for minority groups resulting from the direct or indirect influence of the legislation. A mere rise in the total of minority-group members employed need not indicate a lessening of discrimination. It may only reflect a long-run expansion in population and labor force, with no real change in the pattern of employment. As pointed out before, the aim of FEP legislation is to open up new types of jobs for those previously excluded, and not merely to provide further employment in menial work.

Some of the most important consequences of FEP legislation may be subtle in effect and difficult to trace. For instance, some employers anticipate the impact of the law and revise their employment policies accordingly, though they may never be investigated by the commission or be directly subject to its influence. As in the case of the nondiscrimination clause in contracts, perhaps a major effect of the existence of enforceable legislation is to bolster the position of employers or unions which are prepared to accept greater minority group employment but fear resistance from present employees and the general public. A nondiscriminatory policy can then be "sold" on the basis that the law requires it. Once the racial and religious barriers have been breached, prejudice often melts away as a greater mutual understanding overcomes the traditional stereotypes.

Evaluation of FEP legislation is also made more difficult by the fact that the commissions intentionally discourage the accumulation of specific data on the racial, religious, or nationality composition of the work force.

The questions which must be asked in order to determine such composition may be precisely those which an FEP commission could easily consider discriminatory. A firm receiving a request to compile statistics on the number of Negroes, Jews, or Puerto Ricans employed might well respond that it deliberately avoids making such a determination for fear of arousing the type of suspicion, prejudice, or anxiety which FEP is designed to eliminate.

It should be added, however, that some state commissions not only permit but encourage the accumulation of statistics which are not inconsistent with the purposes of the legislation. In California, in November, 1963, the FEPC issued a statement "on surveys and statistics as to racial and ethnic composition of work force or union membership," in which it specified a number of *post*-employment inquiries which employers and others may legally undertake concerning the make-up of the group in question. Visual surveys and tallies of ethnic composition of the work force, for example, are lawful when they are conducted confidentially and discreetly. Post-hire records on individuals may be kept for research purposes if they are not made a part of the operational personnel records of the employee.

The oldest state FEP law, and therefore the one that has produced the greatest volume of factual and statistical evidence, was enacted in New York in 1945. In a study of this law several years ago, Morroe Berger concluded that "undoubtedly . . . the Ives-Quinn law has reduced the amount of discrimination in employment and has opened new job opportunities to members of minority groups." In a recent comprehensive study, Paul H. Norgren and Samuel E. Hill point out that the New York Commission has probably reached agreements for revision of employment practices with more than 2,000 separate firms over a fifteen-year period, and that, assuming a genuine change in policies, "the result would be a fairly significant improvement in aggregative employment opportunities for racial and other minorities in the state." Using census data for 1950 and 1960 and a number of special studies, the authors conclude that "a noteworthy improvement in the employment status of the state's Negroes has in fact occurred." Studies of long-existing commissions in New Jersey, Massachusetts, and Connecticut also yielded the conclusion that employment discrimination has abated since passage of the FEP laws, "although the extent of the indicated progress falls considerably short of that observed in New York."

Norgren and Hill compared the employment experience of Negroes in New York State with that in three other states (Indiana, Illinois, and Missouri) which did not have enforceable FEP laws in the period from 1950 to 1960. In every key job classification except one (female professional medical and health workers), the employment gains for Negroes in New York exceeded those in the other states by significant margins. The relative gains for Negro workers in FEP states other than New York are comparatively smaller, though still impressive. It is noteworthy that the New York Commission is more adequately staffed than commissions in other states.

The overwhelming majority of complaints received by the various FEP commissions are either dismissed for lack of substantiation or settled by conciliation before reaching a public hearing. Thus, the full legal force of the laws is seldom exercised. Much of the work of the commissions emphasizes a general reduction in discrimination rather than the adjustment of individual complaints. The complaint mechanism is primarily a means by which the commission can "educate" employers and unions in a given industry and thereby achieve a long-run change in policy.

V. The Investigative Process: A "Model" Case

As WE HAVE SEEN, enforcement powers granted to the various government agencies differ considerably, depending on the functions of the agency and the power given by the legislative body. An FEP commission may issue a cease-and-desist order against any firm charged with discriminatory practices which is unwilling to correct them voluntarily, while the President's Committee on Equal Employment Opportunity could only recommend the withholding or cancellation of government contracts under similar circumstances. The new Equal Employment Opportunity Commission cannot issue cease-and-desist orders, but can assist in civil suits brought by the complainants, and can bring to the attention of the Attorney General certain patterns of discrimination against which he may act. All agencies, however, rely primarily upon conciliation, and resort to legal action is rare indeed. In most cases, even if the particular complaint is not sustained, the investigation may uncover other practices of discrimination which the party would be asked to correct.

In this chapter we will focus on the investigative procedure used by a government antidiscrimination agency to determine if racial or religious discrimination is practiced by a specific firm. We will examine a hypothetical case under investigation, where the procedures represent a composite of those adopted by state FEP commissions (notably New York's and California's), by the recently abolished President's Committee on Equal Employment Opportunity, and, presumably, by the new Equal Employment Opportunity Commission. Obviously, techniques and policies vary to some degree from one agency to another; the purpose of our model case is merely to spotlight some of the major considerations of either an employer or a complainant in dealing with problems of discrimination.

It must be emphasized that this is a model case in which the agency investigators closely observe the recommended or required procedures. Unfortunately, limited resources of money, time, and personnel often make it impossible to follow these procedures thoroughly and rigorously in reality.

Let us take, as our fictional example, the case of the Scheherazade Ink Company of South Pasadena, which has a substantial contract to supply red ink to the Treasury Department. In newspaper ads, Scheherazade has announced openings for qualified ink mixers, and a Negro worker with seven years' experience in the trade has applied. During an employment interview with the plant personnel officer, the applicant is informed that he will not be hired for the job because the unique processes used by this firm require a special type of skill which his past work experience does not reflect. When pressed for further clarification, the interviewer responds that others more qualified are available for the job and that the applicant simply fails to meet the required standards.

Since California has an FEP law, and since the firm is a government contractor in interstate commerce with more than one hundred employees in July, 1965, the case is technically within the jurisdiction of three agencies: FEPC, President's Committee on Equal Opportunity, and Equal Employment Opportunity Commission. If the job applicant feels that he has been rejected because of his race, he may file a complaint either with the state FEPC or with the President's Committee or perhaps with both. By law, the firm must post notices concerning its hiring practices on bulletin boards and in other conspicuous places, informing applicants and employees of their rights, and giving the address of the office to which a complaint may be directed.

The rejected applicant may file a complaint first with the California FEPC office, which in this particular case is located in Los Angeles. The state agency has at least 120 days during 1965 (60 days effective July 2, 1966) in which to process the complaint before any action can be taken by the federal government's Equal Employment Opportunity Commission. If the state FEPC finds no basis for the complaint, or fails to adjust his grievance satisfactorily within the stipulated period, the complainant may then redirect his case to the federal agency. In addition, existing legislation does not prevent him from filing a grievance simultaneously with the contract compliance office of the government agency involved (in our hypothetical case, the Treasury Department). The investigative agencies will undoubtedly arrange to coordinate and combine their efforts.

The complainant may register his complaint simply by sending a letter to the nearest FEPC office, or he may visit that office in person. In his letter, he includes his name and address, the name and address of the employer, and a brief description of the job interview. He outlines the nature of the job and of his background, explaining that his qualifications appeared more than adequate. He alleges that the interviewer was cool and abrupt toward him, and that his questions concerning the precise nature of this "unique" job went unanswered. Finally, he states that he is a Negro and believes that, although qualified, he was not hired because of his race. He may find it easier, of course, to get in touch directly with a field representative of the FEPC, who will assist him in preparing the complaint in proper form.

Upon completion and submission of the written complaint, the chairman of the commission will assign one of the commissioners to direct the investigation and remain in charge of the case until its conclusion. The actual investigation, however, is conducted by a field representative on the commission's staff. Assuming that he has already interviewed the complainant, he will now proceed to investigate the complaint thoroughly to determine if it is valid. If he has not previously done so, the investigator will want to gather background data concerning local minority groups, including number and location, manpower skills, schools, recruitment sources, and distances and transportation factors from minority population centers to the community in which the plant is located. Armed with such data, the investigator can point to potential sources of recruitment of qualified minority workers and ascertain if the employer has made a genuine effort to recruit on a nondiscriminatory basis. Of course, he will immediately determine if previous complaints about discrimination at Scheherazade have been filed and whether the company has been surveyed before.

After his interview with the complainant concerning the details of his experience and training and his description of the job interview, the investigator will next discuss the complaint with the employer, in this case the personnel manager of Scheherazade. The complainant may request that his identity not be divulged to the firm, in which case the investigator must phrase his inquiries so as to protect the applicant's anonymity. In this instance, we assume that the complainant has authorized the investigator to reveal his identity. Thus, the investigator will ask specific questions concerning the rejected Negro applicant. How do the latter's educational and work qualifications compare with those of the employees hired for available jobs? In what way, if any, does the Negro worker fail to meet the requirements of the job?

The investigator observes whether the required posters are prominently displayed in several places throughout the facilities of the plant. He will check to make sure that the firm has identified itself as an "equal opportunity employer" in newspaper advertisements and other recruiting media. He then reviews the firm's employment application forms to determine if they contain questions relative to race, religion, or national origin. Sitting down with the personnel manager, he explains the nature of the complaint and inquires into the employment policies of Scheherazade.

His questions are designed to throw light upon possible discriminatory practices. Have Negroes ever been employed, or are they currently employed, at the company? If Negroes are employed, are they concentrated entirely in unskilled jobs? Where does Scheherazade usually recruit its workers? If it uses an employment agency, has the agency been informed *in writing* of a nondiscriminatory hiring policy? Does the firm file job orders with the Urban League and other sources of minority-worker referrals? Does it interview graduates of educational institutions which enroll Negroes and other members of minority groups? Are members of such groups ever referred to it for possible employment?

The investigator will want to know whether the company has a union contract and, if so, whether the union admits applicants without discrimination. He will inquire into all pre-employment requirements, to ascertain if photographs must be submitted or if other indirect methods of discrimination are used. Nor does his inquiry end with hiring practices. He is equally concerned about promotions, layoffs, transfers, and similar personnel factors, and particularly looks for *positive* statements in handbooks, notices, or brochures regarding nondiscrimination in employment.

In our fictional case, the personnel manager explains that management has no objection whatsoever to the hiring of qualified Negro applicants for skilled jobs. It becomes obvious from the conversation, however, that the company fears an adverse reaction among its present employees and local residents who are predominantly Anglo-Saxon.

Following the interview, the investigator checks the various statements made by the personnel manager against the records available to him, and makes an inspection tour of the plant to observe the composition of the work force. He then prepares a detailed report in which he presents the relevant observations and findings. His report is submitted to the commissioner in charge of the case, who then decides, in consultation with the investigator, whether or not the complaint has validity.

In this case we assume that the report substantiates the complaint of discrimination on the basis of color. The commissioner will so inform the employer and the complainant, and will now proceed to confer with responsible persons in the firm to secure an adjustment of its policies through conciliation and persuasion. In this effort, he will be concerned with the *total* pattern of employment, recruitment, and promotion within the firm, not merely with the specific complaint. He will attempt to persuade the employer not only to consider the complainant for employment on the latter's merits, but also to revise his general policy to prevent a possible recurrence of such discrimination.

In our example, an agreement is reached between the company and the commission whereby all racial or religious restrictions will be abolished and all future hiring will be on the basis of merit only. The commissioner submits this agreement to the full commission for approval as a satisfactory adjustment of the case, and, upon action by the commission, the interested parties are notified. The Negro applicant is informed that he may reapply for a position with the firm and will receive consideration based on his qualifications alone. The commission will conduct further surveys of the firm's policies to determine if its agreement is being implemented in practice.

As pointed out earlier, the exact policies of the various state and local commissions vary to some extent. In some instances the investigation can be initiated by the commission itself, while in others an individual complaint is first required. Sometimes investigation and adjustment are limited to a specific complaint, but generally the broader policies of the firm are also considered. In the states of New York, Massachusetts, or Rhode Island, if a conciliation agreement is reached between the commissioner assigned and a given firm, this closes the case; in all other states action by the full commission is necessary. If conciliation attempts are unsuccessful and a public hearing must be called, the case may be heard either by the full commission or by a panel of commissioners, depending on the provisions of the law. The investigation and conciliation processes are conducted in confidence, with no disclosure of information to the general public.

It should be emphasized again that the complaint process is merely a part—and, sometimes, a proportionately minor part—of an FEPC's program. Many commissions use their general investigative and educational powers affirmatively to secure the broadest possible compliance with the provisions of antidiscrimination legislation. The wider the awareness of the commission's presence and the responsibilities of management under the law, the greater is the likelihood of compliance without the necessity for legal sanctions.

VI. Private Campaigns Against Discrimination

By no means has all the impetus for merit employment come from governmental action. Indeed, startling advances in recent years have emerged from private efforts to reduce or remove discrimination in employment. Business, labor unions, and various other private organizations have sometimes initiated programs designed to achieve this end through voluntary means.

Behind these efforts is the fact that in many northern and western regions of the country, the nonwhite population is increasing rapidly. In recent decades, Negroes in large numbers have moved out of the rural areas and small towns of the South and into the cities, especially into the large metropolitan regions of the North and West. For example, during the 1950's, a net of almost 1.5 million Negroes left the South to locate, in overwhelming majority, in confining ghettos somewhere in the hearts of central cities, with whites completely dominating the suburbs. In the same decade, the Negro population in the county of Los Angeles doubled, numbering about 461,000 in 1960. While no exact figures are available, the total Negro population had probably risen to 560,000 by mid-1965. The Negro proportion in the city of Los Angeles now ranges somewhere between 15 and 20 percent of the total population. Almost 90 percent of all Negroes in Los Angeles County live within the boundaries of a huge central ghetto.

The proportion of the Negro population in the cities of Chicago and Philadelphia is probably upwards of one-quarter. For the city of New York, the percentage is close to the Los Angeles City figure, and Washington, D.C., has a Negro majority (about 60 percent).

By 1970, according to an estimate of the Los Angeles County Commission on Human Relations, the population of *visible* minority groups (including Negroes, Mexcan Americans, and Orientals) in the city of Los Angeles may be in excess of 50 percent, if existing trends continue. About one-third of Chicago's population will be nonwhite by that year, and Negroes and Puerto Ricans will constitute about 45 percent of New York City's population.

From a business viewpoint, a major advantage of merit employment lies in the expansion of the pool of qualified workers. The hiring of trained employees, regardless of race or religion, is therefore as much in the interest of management as it is in the interest of minority-group members. Many employers and employer groups have declared that the hiring of workers from these groups makes good business sense. Moreover, they feel that business must make increasing use of minority-group members in order to meet its need for skilled and semiskilled workers. With an accelerated growth in gross annual product, scarcity of skilled labor may well become an acute problem.

1. TYPICAL MANAGEMENT EXPERIENCE WITH MERIT EMPLOYMENT

A number of extensive surveys have been conducted in recent years, each designed to evaluate the experience of employers with the employment and promotion of Negroes and other minority-group members in the work force. Among them are studies undertaken by Professor Paul H. Norgren and his associates at Princeton University, the Illinois Commission on Human Relations, the Bureau of National Affairs (BNA), *Business Week* Magazine, and the author of this book. All surveys have reached substantially the same conclusion: implementation of a merit-employment policy is almost invariably successful and without major difficulties or problems.

Of course, it is extremely difficult to eliminate every trace of discrimination in a given industry or major firm. Some discriminatory practices may never come to the attention of top management or department supervisors. In addition, it is not always possible to distinguish realistically between a genuine nondiscriminatory policy and mere "tokenism." Despite these qualifications, certain industries have moved significantly in the direction of equal employment opportunities.

A number of prominent American corporations—Radio Corporation of America (RCA), International Harvester, Pitney-Bowes, and many of the leading automobile, aircraft and aerospace, and steel manufacturers—have successfully pursued nondiscriminatory policies for many years. Describing the results of merit employment to a U. S. Senate committee, President Frank M. Folsom of RCA stated in February, 1954, that "we have seen doubts and reservations vanish in the willingness of people of all classifications to work together productively in harmony and friendship, regardless of differences in color or religion."

The aircraft and aerospace industry now employs thousands of minority-group members, some of whom occupy technical, professional, and supervisory positions. This has been accomplished without friction and with economic benefit to the companies concerned.

Some of the large public utilities in Southern California have had long experience with merit employment. Even in those instances where Negroes have been employed as servicemen to adjust and service equipment in the homes of customers, both white and Negro, no complaints of any significance have been registered on the basis of racial prejudice. Negroes and other minority-group members have been assigned to a variety of positions, including some which require contact with the general public, with no harmful or unpleasant results. In some instances, the major obstacle encountered has simply been the scarcity of qualified job applicants from minority groups.

In large firms, the successful adoption of merit-employment practices often depends on the attitude of top management and the industrial relations staff. Where a key executive interests himself in the problem and actively undertakes to encourage a nondiscriminatory policy, concrete results are likely to follow. The experience of one public utility has been that a determined effort along these lines by management can overcome the fears and hostility sometimes expressed by group supervisors.

An early survey, conducted in 1955 and 1956 by the Illinois Commission on Human Relations, found that merit-employment policies had been implemented successfully in every firm which had adopted them. The great majority of employers listed economic factors as the initial reasons for adoption of merit employment, though about one quarter stressed moral motives. Most of them had started the policy without outside assistance, recruiting minority-group employees from the following sources (ranked in order of frequency): walk-ins and employee contacts, Illinois State Employment Service, private employment agencies, newspaper ads, social agencies, schools, and unions.

In a mid-1965 survey, the editors of the Bureau of National Affairs queried personnel and industrial relations executives on the experience of their respective companies in integrating the work force. Only eight percent of the respondents indicated that there were problems. Most of the employers indicating difficulties did not regard them as significant, the most serious problem appearing to be the formation of ethnic cliques in the office or plant.

An extensive *Business Week* survey in 1965 reached a similar conclusion. Integration had proceeded peacefully and without incident in the overwhelming majority of cases, though the report noted that management usually had planned the move carefully. The respondents emphasized that the initial management directive must be firm and clear, and no exceptions must be allowed. Occasional indecision or even failure to implement the policy may occur at lower supervisory or departmental levels, when those concerned are uncertain whether the expressed statements of top management are genuinely meant or are merely intended as public relations gestures.

2. UNIONS AND MERIT EMPLOYMENT

Many unions in the United States have conducted a long-term campaign for merit employment. The official position of the AFL-CIO is clear and unequivocal: all forms of racial and religious discrimination in employment are iniquitous and member unions are pledged to eliminate them wherever possible. To implement this policy, the AFL-CIO has a Civil Rights Department to develop and carry out a program for the strengthening of civil rights generally, and to eradicate any traces of discrimination within the union movement specifically.

A pioneer in the fight against racial discrimination was the United Mine Workers Union, which even in southern regions has admitted Negroes to full membership and participation in union affairs. Unions such as the United Automobile and Aerospace Workers, the International Union of Electrical Workers, the United Steelworkers of America, the United Packinghouse Workers of America, the Amalgamated Clothing Workers, the International Ladies' Garment Workers Union, the Oil, Chemical, and Atomic Workers International Union, and many others have initiated programs or committees to eliminate discrimination in union ranks or within their respective industries.

A number of unions have negotiated specific antidiscrimination clauses in their contracts. For example, Local 770 of the Retail Clerks Union, Los Angeles, has introduced such a clause into its agreement with grocery store employers in that area, providing in part:

> Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies or requirements, race, color, creed, national origin, age or sex.

In a number of industries, particularly the mass-production industries of the North and West, unions have worked closely with management in combating discrimination. Several have special antidiscrimination committees: the United Automobile and Aerospace

Workers' Fair Practices and Anti-Discrimination Department, the United Steelworkers' Committee on Civil Rights, and the United Rubber Workers' Fair Practices Committee. Many of these committees have counterparts within the union locals which help Negroes and other minority workers in filing grievances either with management, federal government agencies, or the various FEP commissions.

But discrimination does remain a problem in some unions. Only the personal intervention of President George Meany of the AFL-CIO persuaded Local 26 of the International Brotherhood of Electrical Workers in Washington, D.C., to accept a token integration of its membership in 1960. Many of the craft unions in the building construction industry have resisted the inclusion of Negroes into union ranks and into the apprenticeship programs established throughout the industry. Within several international unions, some locals are discriminatory and others are not.

For many decades, some of the railroad unions had clauses in their constitutions stating that only "whites" were eligible for membership. Those affiliated with the AFL-CIO, however, have been directed to eliminate such clauses. While most of the unions have now revised their constitutions, in many cases it is not at all clear that this reflects a corresponding change in policy.

In the southern states the policies of unions vary considerably. Several maintain a consistent opposition to segregation or any other form of discrimination, even where community sentiment is strongly to the contrary.

This is particularly true in those instances where a given corporation has plants in various parts of the country and generally has contracts with the same international union. In many cases, however, unions have felt it necessary to modify or abandon their antidiscrimination position in order to retain membership in the South.

Only occasionally, of course, is racial or religious discrimination spelled out in a union's constitution. Usually the process is camouflaged so that the rejected applicant for membership is not informed of the real reason for his rejection. He is merely blackballed under a constitutional requirement that a new applicant must be acceptable to present members of the local, or through other equally informal means. While the Taft-Hartley Act provides that an applicant who tenders his initiation fee and dues may not be denied an available job under a union-shop agreement, even though he is disqualified from membership on racial or religious grounds, his inability to join the union will deprive him of certain rights and benefits enjoyed by other workers. In some instances, even today, a Negro is given union membership but placed in a segregated local.

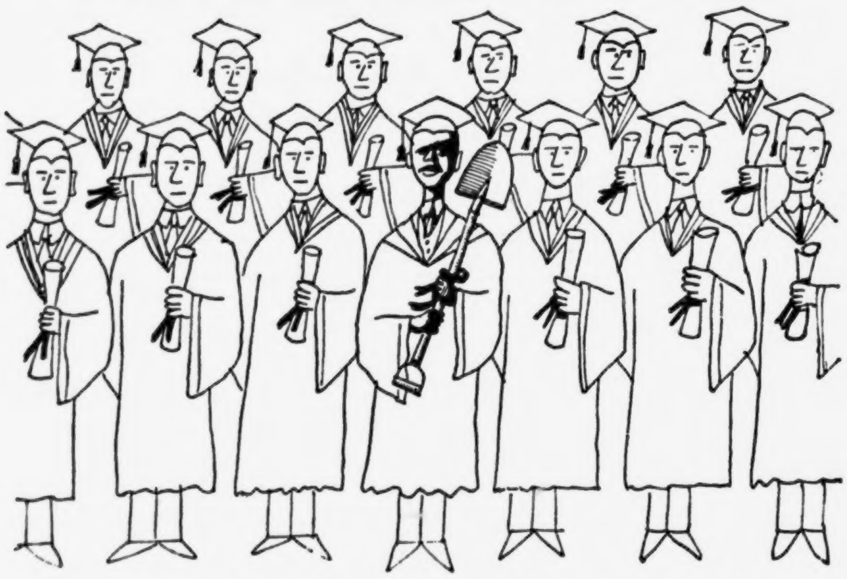
The experience within unionized plants in areas where strong racial feeling exists has shown that discrimination can be effectively overcome only if *both* the union and the employer take a firm and unyielding stand against it. Weakness and vacillation on the part of either invariably give prejudiced troublemakers an opportunity to undermine morale in the place of employment.

3. COMMUNITY ATTACKS ON DISCRIMINATION

The war against discrimination in employment is waged on many fronts. Sometimes the pressure for merit employment comes from economic forces spontaneously generated by labor scarcity, population shifts, or similar factors; on other occasions, political or social forces often represented by government and organized labor serve as catalysts. However, much of the credit for progress in this area must also go to private organizations and groups which work continuously with labor and management for the achievement of greater employment opportunities for minorities.

The National Urban League has long experience in the field of minority-group employment. Founded in 1910, this interracial agency concentrates on assuring greater equality of economic opportunity for Negroes and members of all groups which suffer from discrimination. Working in industrial relations, vocational guidance and training, housing, health and welfare, and related areas, the Urban League serves in part as an intermediary between businesses needing qualified employees and minority-group members seeking jobs. Community affiliates of the Urban League are organized in areas with large minority-group concentrations.

Practical and systematic in its approach, the Urban League deals with the problem of discrimination in a variety of ways. In the employment area it has two fundamental goals: to persuade businesses and unions to drop discriminatory practices, and to increase the supply of *trained* workers among Negroes. As job opportunities expand for Negroes and other minorities, the second goal assumes increasing importance.



The League and its affiliates provide a continuing service to industry through informational, consultative, and recruitment programs, by which employers are assisted in finding qualified Negro workers. Though they do not operate employment agencies as such, the local Leagues often receive and fill specific requests from employers for Negro applicants having particular skills or experience. They also work in close cooperation with the U. S. Employment Service, state employment agencies, unions, business organizations, and others in developing new opportunities for Negroes.

A League undertaking of special significance at the present time is the so-called "Skills Bank" project, under which an effort is made to register as many Negroes as possible who have skills needed by industry. One of the purposes of the "Skills Bank" is to identify Negroes who possess qualifications which are not effectively utilized in their existing jobs. Employers implementing a merit employment policy often find it desirable to list their job openings with the local Urban League office and/or the "Skills Bank" of the nearest National Urban League office, which then may be able to refer Negro workers to them after a preliminary screening. Government agencies which evaluate employer policies in this area will sometimes inquire into the use of Urban League facilities and other sources of recruitment of minority-group workers.

An important part of the Urban League's program is vocational guidance. The League asserts that many skilled Negro scientists, technicians, engineers, and professional workers could be placed in jobs immediately if they were available for employment. The long-time existence of discrimination has obviously persuaded many parents and vocational advisers that it is a waste of time and effort for Negroes to prepare themselves for the highly skilled jobs in American industry.

In many communities, the Urban League will cooperate closely with employers in preparing the way for the "pioneer" Negro employees. Some firms consider it highly important that the first minority workers be selected carefully, as their impression upon fellow employees will largely determine the ease or difficulty of the transition to merit employment. It should immediately be stressed, however, that employers should not insist upon exceptional qualifications for their Negro applicants or employees. The ultimate test of sincerity in a merit employment policy is the hiring of minority-group applicants without discrimination at all levels of skill and job content, not merely of those who have special or unusual qualifications.

In addition to the Urban League, a great many organizations concern themselves with problems of employment discrimination. The techniques and programs vary widely, from educational conferences to picketing and boycotts. The National Conference of Christians and Jews concentrates on an educational program which enlists the participation of businessmen, union leaders, personnel directors, and university representatives in discussing the problem of prejudice and promoting merit employment. The National Association for the Advancement of Colored People emphasizes legal, legislative, educational, and, sometimes, direct-action measures designed to eliminate discrimination in all areas. The Congress of Racial Equality (CORE) and the Student Non-Violent Coordinating Committee (SNCC) conduct extensive and vigorous campaigns against discriminatory practices, as does the American Friends Service Committee (Quaker). The Young Men's and Young Women's Christian Associations, the National Council of Churches, the National Catholic Welfare Conference and the Catholic Youth Organization, and many Jewish agencies—the Anti-Defamation League of B'nai B'rith, the American Jewish Congress, the American Jewish Committee, the Jewish Labor Committee, and local community relations committees—concern themselves with various aspects of the general problem of discrimination. The Japanese American Citizens League carries on many programs in the interest of Americans of Japanese descent. There are literally hundreds of local organizations which are active in this field in varying degrees, attacking racial and religious discrimination either on a broad front or in specialized areas.

A significant trend in recent years has been the formation of many organizations in the Mexican American communities of the Southwest, some of which focus on problems of employment and related matters. In the Los Angeles area, the Equal Opportunities Foundation cooperates with major employers, government agencies, and universities in an effort to expand employment, educational, and training opportunities for Mexican Americans. The functions of this organization, in principle, are similar to those performed by the Urban League in the Negro community. Among other Mexican American organizations, the Community Service Organization (CSO), the GI Forum, the League of United Latin American Citizens (LULAC), and the Council of Mexican-American Affairs in Los Angeles are concerned with economic, political, and educational problems. In areas with significant Mexican American concentrations, employers should make contact with one or more of these organizations to determine if additional measures are needed to expand merit employment of Mexican Americans. Few now realize that in states such as California and Texas, the Mexican Americans represent a much larger group than the Negroes.

VII. Merit Employment: Techniques, Problems, and Results

MERIT EMPLOYMENT is no longer a hypothetical issue in much of American industry. Years of practical experience under this policy have produced an abundance of factual information on its operation, problems, and results. This evidence is available for our examination.

The lessening of discrimination in employment has had an impact on several segments of American society. The minorities themselves have been profoundly affected by the changes that have been made. Many employers have been influenced to revise their views and their policies as a result of their observation of, or experience with, minority-group employment. In the process, a great many long-cherished stereotypes about such minorities have been shattered.

The outstanding fact about merit employment is that it works. The crises and difficulties so often anticipated seldom materialize. With foresight and planning, and sometimes with no special preparation at all, the transition to nondiscriminatory employment is almost always smooth and uneventful.

1. MINORITIES IN THE WORK FORCE

The growth of merit employment in certain areas and occupations has outdistanced the preparation and training of some minority-group members for available jobs. Long barred by either overt or subtle discrimination from most technical, skilled, and white-collar jobs, they may sometimes fail to reorient their vocational plans and goals to take advantage of existing opportunities. Perhaps one major difficulty is that many thousands are totally unaware of the availability of nontraditional jobs.

It is ironical that some of the available jobs are near the top of the occupational hierarchy in industry, whether in terms of skill, prestige, or income. With labor shortages in many fields of engineering, science, and research, members of minority groups could secure such high-level jobs *if* they had the necessary training. However, many present or potential workers still think, or are counseled, only in terms of menial work.

In March, 1964, the median schooling of white workers eighteen years old and over was 12.2 years, while the corresponding median for nonwhites was 10.1 years. Thus, the education of nonwhites continues to lag behind that of the whites, though gains have been made in recent years. Therefore, the educational opportunities of nonwhites must be improved if members of minority groups are to be adequately trained for more and higher-skilled jobs.

From the viewpoint of a minority-group worker seeking employment, the unskilled jobs and certain professional and technical occupations now offer the fewest obstacles. On the one hand, Negroes and other minorities have long been employed in unskilled jobs, and resistance to them is relatively slight; indeed, some of these low-level jobs seem to be earmarked for the minorities. On the other hand, the application of merit-employment principles to some of the high-level jobs is comparatively easy, because there is a shortage of qualified applicants and the objectivity of the job standards (technical proficiency, academic degrees, and successful completion of examinations) is such that racial or religious prejudice and similar purely subjective factors are less likely to influence the selection of the employee. Also, the professional or technical worker often functions more or less independently, so that social or public relations contacts are somewhat minimized.

However, there are many difficulties, particularly for Negroes, in certain categories of white-collar employment. Clerical, office, and sales jobs often involve relationships with customers and the general public. It is here that factors of temperament, personality, and status can become of great importance. Because of the past identification of Negroes with low-status jobs, white workers may feel that their "prestige" is threatened when Negroes begin to occupy the same jobs as whites. An employer may use the excuse that a Negro employee would not "fit in." Stereotypes may affect the attitudes of present personnel toward Negroes, Orientals, Mexican Americans, Puerto Ricans, Jews, Catholics, and others. When sales jobs are concerned, employers may fear adverse reactions from customers if salesmen from minority groups are hired, and are thus unwilling to take the risk of losing accounts.

Actual experience, however, seldom supports these fears. There are many instances where Negroes, Orientals, and others have been employed as secretaries, clerks, and even as sales personnel without difficulty. For example, in one major west-coast department store chain, a Negro was promoted to a responsible position in charge of the claims office, which processes claims against suppliers and manufacturers for incorrect billing and similar items. This job required the occupant to come into contact with both outside firms and buyers within the company, and demanded exceptional tact and diplomacy. The promotion was adjudged to be entirely successful.

While many of the direct or indirect barriers formerly maintained by professional schools and associations against admission of minority-group members have been removed in recent years, some discrimination persists. Some have excellent formal statements of policy but fail to implement them adequately. Even where schools now admit minority-group members into training without discrimination, they sometimes observe established discriminatory patterns in the placement of such students upon completion of their courses. Thus, a school placement office may refuse to refer Negro graduates to firms or institutions where, in its opinion, Negroes are not wanted.

In many firms executive, administrative, and technical jobs remain closed to minority-group members. Although minorities are sometimes employed extensively in production and even in lower-level white-collar positions, they are denied the chance to rise higher in the job scale. For example, recent studies have shown that Jews are underrepresented in the executive ranks of many corporations. Discrimination, sometimes subtle and almost undetectable, may exist at any level of the occupational hierarchy.

There also remains strong resistance to the employment of Negroes in many of the skilled trades, which is reflected in the discriminatory policies of certain craft unions. The reasons are partly economic (the desire to preserve a "tight" labor market of white workers) and partly sociological (the "prestige" factor). Resistance has been encountered in the building construction, printing, entertainment, and metal crafts, among others.

Nevertheless, in view of the expanding job market for minorities, one generalization seems justified: minority-group workers with specialized skills and training have a better opportunity to secure attractive jobs today than at any previous time. The problem here is to break down the obstacles created by inertia, ignorance, and tradition. Where a particular pattern of employment has long been pursued, minorities inevitably restrict their job search to those industries and occupations where they have achieved the greatest success in the past.

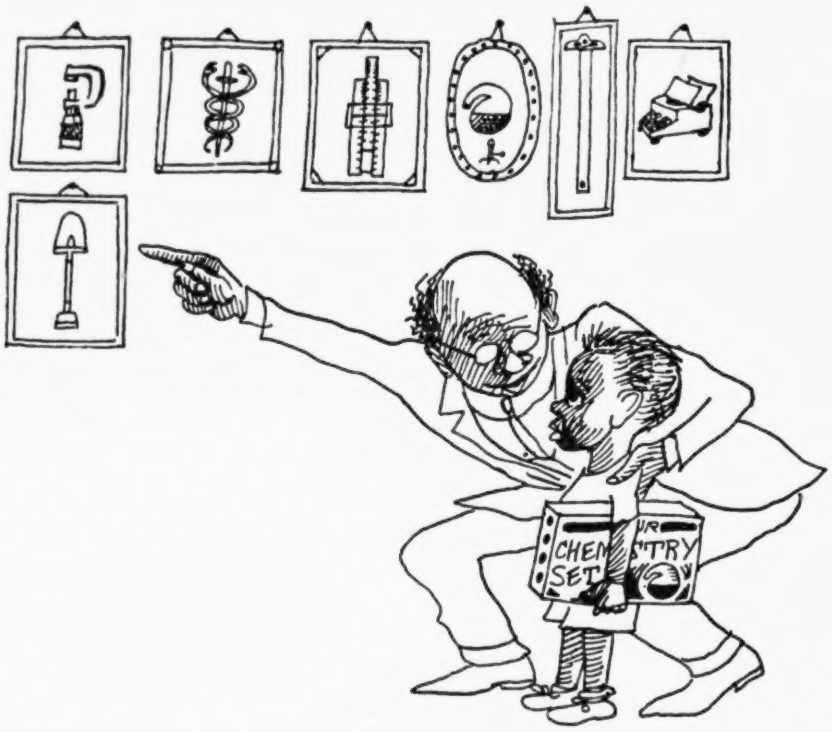
This problem can best be attacked at the secondary-school level. The counseling and training of minority youths at that stage will determine whether they merely pursue the familiar employment paths or prepare for new, nontraditional careers. Agencies of both the federal and state governments, private organizations such as the Urban League, and the schools share responsibility for reorienting young people at the junior high school, high school, and college levels. For Negro youngsters, in particular, it may be important to begin the process of reorientation as early as the elementary grades.

Here community agencies play an important role. For example, by informing parents of future job opportunities for their children, they can at least induce them not to discourage youngsters from entering nontraditional careers. Too often, the parents are unaware of the changes in the job market that have occurred since they themselves searched for work.

School counselors and teachers perform a crucial function. Unless they keep well informed on current job trends, there is a danger that they will automatically guide minority students into the traditional unskilled occupations. In every major community where minority-group concentrations are found, community agencies will supply material to, and cooperate with, vocational counselors in making them aware of available jobs. The Equal Employment Opportunity Commission on the federal level, and the various fair employment practice agencies and the public employment service on the state level, also work with counselors in providing information and motivating young people to acquire skills.

School placement offices should refer their students on a nondiscriminatory basis. This policy can pay dividends in unexpected ways. A trade and technical school in the Los Angeles area, which observes a policy of nondiscrimination in its referrals, once received a request for a qualified printer from a firm that had previously refused to hire Negroes. Despite the firm's past discrimination, the school referred an outstanding Negro student whose qualifications were such that the employer defied precedent and gave him a job. His work proved so excellent that the school received another request from the firm: "Send us more Negroes." The school continued its policy of referring the best qualified students regardless of race.

Discrimination and prejudice, in addition to the overwhelming economic implications, generate many social and psychological problems and situations for minority-group workers. Forced by segregation into substandard housing, and often denied adequate educational opportunities (especially in the rural South), members of such groups may lack the opportunity to learn the social skills considered necessary in making a favorable impression on prospective employers. Appearance, as one example, can be of decisive importance, especially in an office or sales situation. In addition, some encounter language problems, notably many Mexican Americans and Puerto Ricans.



In view of these difficulties, some high schools now train their students in proper behavior and dress at a job interview. Through role-playing and other devices, students have a chance to learn what sort of deportment employers expect of them. These are not, in any sense, educational "frills." In a competitive society, the personal and social skills of an applicant frequently determine whether or not he gets a job or a promotion.

No procedure or educational program is quite as effective in overcoming stereotypes as the actual hiring of a minority-group member. A special responsibility, therefore, confronts the first such employee hired in a particular job or firm. The "pioneer" will be judged not only in terms of his work abilities, but also in terms of purely personal characteristics which others may identify with his race, religion, or national origin. He becomes a kind of symbol by which all members of his group will be evaluated. As prejudices and concepts of stereotypes disappear, new hires will be treated more as individuals and less as symbols. Just as Jackie Robinson ceased to become a symbol when he was allowed to argue with umpires, hecklers, and other players, in accordance with the traditional prerogatives of any baseball player, so, ideally, will the minority-group worker become accepted as a regular member of the work force.

The transition period can sometimes be difficult in many unexpected ways, from the viewpoint of the employer as well as from that of the worker himself. Informal office or factory banter may give rise to occasional problems. Words creep into the everyday language of many workers which are offensive, intentionally or unintentionally, to minorities (and often to other employees not members of the specific minority group). One prominent California firm experienced several instances where a Negro flared up because someone inadvertently referred to him as "boy," a term that for him seemed to reflect southern attitudes. The process of integrating Negroes and whites for the first time involves mutual understanding; each group must make allowances for the other. Intelligent supervision and a firm policy by management can almost always prevent serious incidents from occurring.

American humor is sometimes based on racial or religious stereotypes, for instance the dialect joke. While such humor may not be maliciously intended, its effect can be harmful to good relations among the various groups. Some workers are misled by the fact that minority-group members occasionally tell such jokes themselves. The line between good and poor taste in this area is an indistinct one, at best. A "Catholic" joke told by a Catholic, for example, may have a totally different impact from a similar joke told by a non-Catholic, which might be interpreted by the hearer as expressing an anti-Catholic bias even though the speaker might not have intended it. A good rule to follow consistently is to avoid references to race, religion, or national origin which could in any way be misinterpreted.

In summary, the relationship among different groups within the work force calls for a strong dose of common sense. Workers should be aware that certain words and phrases are "loaded" so far as members of a specific race or religion are concerned. Members of minority groups, on the other hand, should be equally aware that many of these terms are not deliberately intended to be insulting.

2. MANAGEMENT'S ROLE IN A MERIT-EMPLOYMENT PROGRAM

In an earlier chapter, we reviewed management's generally successful experience with merit employment. The examples given there are not unusual, but occasionally difficulties may arise in the implementation of merit employment. As long as management treats all workers equally, neither punishing minority employees with undue severity nor leaning over backward to overlook errors, no serious problem is likely to develop. The most common experience has been that the anticipated crises never occur at all, and that with a little intelligent planning the integration of different groups into the work force proceeds smoothly. We will now examine the techniques and problems involved in effecting this integration, from management's viewpoint.

a. *Finding the minority-group worker*

As has been mentioned before, an employer will sometimes complain that it is difficult to find qualified minority-group applicants, or that Negroes and others never apply at his firm. The obvious answer is that, unless the employer makes it clear that he does not discriminate, members of minority groups may simply assume that no jobs are available to them, or they may never be directed to the firm. Oftentimes, then, the employer must go beyond a mere declaration of nondiscrimination and take positive steps to encourage applications from those against whom discrimination is commonly practiced.

It is important that the employer inform all recruiting sources that a merit-employment policy is in effect, and that applicants are to be referred without regard to race, color, religion, or national origin. Unfortunately, such sources in many communities have been used, directly and indirectly, to exclude members of minority groups. Each firm should, therefore, provide affirmative evidence, preferably in writing, of its nondiscriminatory employment practices. The employer may also wish to contact various community or government agencies that specialize in this field, and secure their help in selecting qualified applicants for the jobs.

If the firm has a union contract, the union can be of help in finding applicants for openings. Problems sometimes arise when the union has a selective or restricted admission policy, either based directly on racial considerations or simply on maintaining a tight labor supply. In certain occupations, union restrictions on entrance effectively prevent minority-group members from securing a foothold. There are some cases where employer and union deliberately use one another as scapegoats to shift responsibility for discriminatory policies.

In selecting the first minority-group workers, some employers have found it advisable to establish certain qualifications in addition to the regular work skills. Particularly in a white-collar job, the personality and temperament of the "pioneer" employee will be important. Mainly it is desirable that the newly hired worker have a pleasant and friendly personality and emotional stability. Much depends, of course, on the nature of the job; a technical job primarily requires professional skill and training, whereas the less skilled occupations involve a greater emphasis on personality factors. As pointed out before, however, this policy contains certain dangers. It is unreasonable, and illegal under existing legislation, for employers to require unusual and sometimes "superhuman" qualifications of their minority-group employees.

It is common in many firms for present employees to refer their friends or relatives to job openings. If no, or few, Negroes are currently employed, this process may exclude Negroes from equal consideration for job opportunities as they develop. The employer, therefore, must make certain that recruitment is broadened sufficiently to overcome this barrier.

b. *Implementing a merit-employment policy*

There is no set formula for introducing minority-group members into the work force. Some employers bring them in at low levels, others at high levels. One survey has indicated that many employers find it desirable to place the first Negro employees in beginner jobs and then advance them on their merit according to regular procedures. Whatever the level of the job first offered, the new employee should be briefed in advance on any problems he might encounter, and on the ways in which he can meet them. Of equal, or greater, importance is the briefing of supervisors and, where necessary, other employees in the same department. It must be made clear at the outset that the hiring of minority-group workers represents a firm policy of management.

A survey of nondiscriminatory firms by Industrial Relations Counselors, a private research organization, emphasized that "effective communication within a company of its decision to employ Negroes on the strength of their qualifications was stressed as being of critical importance by the majority of companies whose policy goes beyond mere compliance with law." This survey also underlined the importance of determining the pace and method of introduction of Negro employment in advance of initial hiring. Some companies moved gradually, and others moved quickly, but all followed a predetermined plan.

The recent *Business Week* survey noted that the advice most often given by the pioneer firms has been: "Make it plain that this is not something that is first to be discussed and debated up and down the line. The work has to come from the top—and it must be firm." Another personnel relations executive added that "You have to be arbitrary, but you've got to do it with a velvet glove."

While the ultimate goal is to erase special treatment of any employee, a few preliminary precautions in the early stages of implementing a merit-employment policy may sometimes prove advisable. In some situations, companies have followed the policy of hiring "pioneer" Negro workers in pairs, so as to reduce their feeling of isolation. However, other companies have pursued exactly the reverse policy, hiring Negroes individually and deliberately scattering them throughout the work force to forestall their clinging together for emotional security. One large aircraft company on the west coast lets the department or group supervisor determine whether any special hiring policy will be adopted, on the assumption that department personnel varies considerably and only the supervisor is in a position to judge the probable reactions of his subordinates.

Many of the firms surveyed by Industrial Relations

Counselors placed the first Negro employees in departments having supervisors who were in sympathy with the nondiscrimination policy and whose leadership was accepted by their subordinates. However, several employers who had adopted these special procedures later admitted that they had been needlessly cautious in this respect.

A large public utility in Southern California has discovered that personal characteristics (dress, hygiene, personality) are of critical importance in determining the acceptance of Negroes in a department. Its observations do not confirm the view held by some employers that it is desirable to hire light-skinned Negroes at first on the assumption that they arouse less prejudice. This company's experience has been that color of skin has no effect upon acceptance; personality factors and general appearance are the main determinants.

The introduction of a merit-employment program, and the orientation of employees with respect to it, sometimes require a bit of subtlety. A great many companies have the group supervisor personally welcome the new worker, introduce him to his associates, and then lunch with him the first few days to put him at ease and enable him to meet as many coworkers as possible. This practice, however, should be reasonably consistent with the firm's usual orientation policies. The impression should not be given that the company is discriminating in favor of minority groups.

In cases where a Negro worker is introduced into a department for the first time, some companies consider it wise to have the supervisor inform each employee, often casually and informally, of the imminent arrival of a Negro in the group. Other companies, however, deliberately avoid any special policy in this respect. There is general agreement on two points: (1) it should be clear that the employment of Negroes represents an established policy of management; and, (2) after merit employment has been initiated throughout the firm, procedures for selection, orientation, and placement should be uniform for all employees without exception.

If an employee threatens to quit in response to the hiring of a minority worker, the usual policy of management is to answer, in effect: "Go ahead, if you feel so strongly about it." Rare indeed is the instance of any employee leaving a good job simply because a minority-group member is hired in his department.

Some large firms, as in the west coast aircraft industry, distribute employee handbooks which emphasize that no discrimination on racial, religious, or other grounds is practiced. A major aircraft company shows all new employees an orientation film which has shots of interracial groups in various departments, without explicitly mentioning its nondiscriminatory policy. This "soft-sell" approach is also used in the company newspaper, which often features photographs of Negro and other minority-group employees.

In his implementation of merit employment, the businessman may confront the practical dilemma often faced by those working to eliminate discrimination: does a special or unusual policy affecting a minority group in itself constitute "discrimination," even though it is intended to facilitate the employment of members of the group? While there is no universally applicable answer to this question, experience suggests the following guides:

1) Any kind of special treatment, whatever its nature, is undesirable in principle and should not be regarded as ideal in the long run. The ultimate goal of management should be to attain complete equality in employment conditions and opportunities for all workers regardless of race, color, creed, or similar factors.

2) It is unrealistic to ignore the past and present pervasiveness of discrimination in American society and to pretend that it does not exist. The employer cannot remain blissfully unaware of the barriers encountered by particular minority groups in other parts of the community. His attention to the problems of minority-group employment will be in proportion to the degree of prejudice manifested by his other employees, his customers, or the community as a whole. In giving special consideration to such problems, and to the continuing effects of past discrimination, the employer does not engage in or condone "discrimination" but merely recognizes its existence and the need for procedures to combat it.

3) These principles require flexibility of approach in the implementation of merit employment. Any special procedures used in introducing minority-group members into the work force, or in handling their grievances, should be informal, unpublicized, and, preferably, temporary.

4) Since the employer ultimately will want to abandon these procedures, it is unwise to give them official recog-

nition and status. As a general rule, no deviation from the normal routine should be permitted unless it is considered essential to the success of the nondiscrimination policy.

Even in companies which have long-established policies of merit employment, supervisors sometimes practice discrimination. The industrial hierarchy is often so complex that these policies can be thwarted by either intentional or unintentional violation in the lower echelons. Foremen, supervisors, and others may assume that whites are to be given preference over Negroes, or Protestants over Catholics and Jews, or they may simply express personal prejudices regardless of company procedures. Some may have come from plants or areas where discrimination was the rule rather than the exception. Unless they are made and kept aware of the company's nondiscrimination position in no uncertain terms, they may automatically revert to their accustomed ways. Needless to say, neither formal nor informal segregation should be permitted anywhere in the plant.

c. *The minority-group worker on the job*

After the minority-group member is hired and put on the job, a merit-employment policy requires that he be treated on the same basis as all other employees. Ideally, this means equality in promotions, transfers, demotions, and participation in all the benefits and activities associated with the job.

The unfortunate truth is that this goal remains largely unrealized. Negroes, for example, do not always advance as rapidly or as far as white workers of comparable skill. Perhaps the chief barrier in this case is the bugaboo of Negro supervision over whites. In several companies this problem has been overcome, and Negroes may be found in supervisory positions; in others, advancement for Negroes has been restricted.

The results of the Industrial Relations Counselors' survey tend to refute the common belief that whites will resent or refuse to accept supervision by Negroes. "The managements said they encountered no serious protest when Negroes were promoted to supervisory positions, nor has there been any subsequent manifestation by either white or Negro employees of resentment or unwillingness to accept direction from Negro supervisors."

Some firms surveyed report a tendency among their Negro supervisors to be "too easy" on the whites under their direction, and a corresponding tendency among white supervisors to be too lenient with Negroes. In some cases, Negro supervisors were found to be "extra tough" in supervising Negroes. In all such instances, management has emphasized to supervisors their *responsibility for* preserving uniform standards of performance, and has assured them of company backing for all reasonable disciplinary measures taken.

The informal and unofficial organization of the work force can sometimes lead to effective discrimination even though the formal policies of the firm are beyond criticism. For example, a Negro may not be given the kind and quality of assignments which would enable him to demonstrate his competence or leadership capacity. The discretion necessarily exercised by the foreman, and often by the senior members of the work group, leaves room for *sub rosa* discrimination which prevents the Negro from making his case for advancement.

The type of subtle discrimination which may exist in a closely knit group is particularly difficult to overcome. A tacit agreement among certain key leaders in a unit can assure that a Negro never performs work above a minimum level of skill and responsibility. Alert management and supervision, therefore, must inquire into those informal practices which often defeat the purposes of their formal policy.

All available surveys indicate that Negroes are generally as productive on the job as are their white colleagues. Of the 100 employers surveyed by the Illinois Commission on Human Relations, 86 responded that white and nonwhite workers on the same job were about equally efficient. Most of the remaining 14 felt that, for various reasons, nonwhites were superior in their jobs. None said that nonwhites could not carry their share of the work load.

The survey conducted by Industrial Relations Counselors offers further exidence that Negro workers are fully on a par with employees from other groups. Of the 31 companies which appraised the overall performance of their Negro employees, 25 agreed that in general it was equal to the work performed by others. In six firms, one or more of the representatives stated that Negro performance had been somewhat less adequate, but in three of these firms there was disagreement among those interviewed on this point. Many of the respondents emphasized the effective work of Negroes in nontraditional jobs.

Employers also agree that community or employee resistance to the presence of Negroes in nontraditional occupations, outside the deep South, is rare. Many firms, even some in the South, have been surprised at the absence of anticipated hostility. Very few report any incidents arising out of racial intermingling. All advocate strict impartiality in disciplinary cases: white and nonwhite employees are to be treated equally for comparable misbehavior or infractions of rules. Some companies have indicated an excessive number of wage assignments or garnishments (the assignment of wages to satisfy a debt, voluntarily in the former case and by legal action in the latter) among their nonwhite workers. The Industrial Relations Counselors' survey reveals that the main approaches to this problem adopted by employers are "(1) to educate Negro employees about their responsibilities in legal matters, and (2) to issue warnings to all employees against recurring wage assignments, with threat of dismissal."

Most of the firms surveyed have reported no special problems whatsoever with nonwhite employees. Despite this, Negroes remain proportionately underrepresented in supervisory or administrative positions. Several executives stated that only a lack of training or skills prevented Negroes from rising higher in the job hierarchy. Some felt that it was only a matter of time before Negroes would advance to minor executive jobs, emphasizing that such jobs were open to Negroes with sufficient proficiency and aptitude. In many instances, undoubtedly, this is simply a rationalization for subtle discrimination. Whatever the forces at work, further efforts are needed to improve job opportunities for all minority-group members in the higher occupational levels of industry.

VIII. Summary and Conclusions

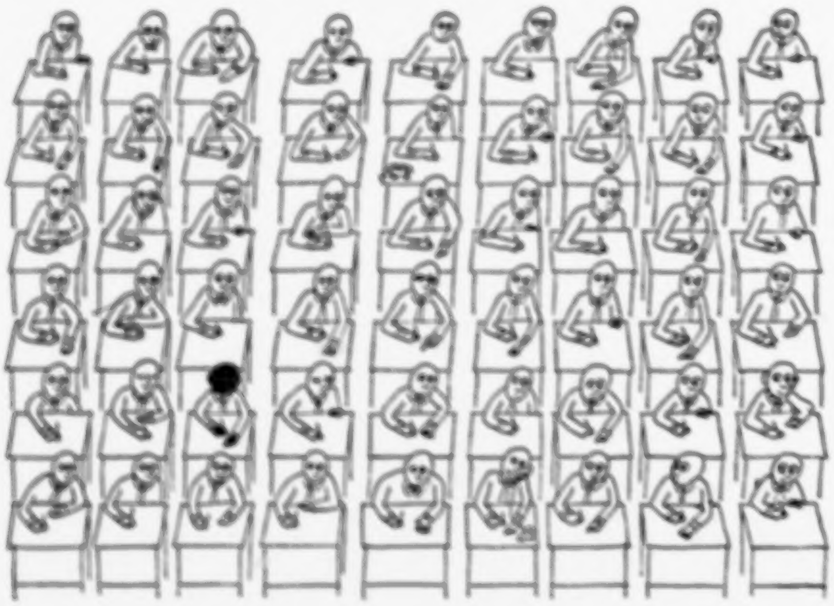
In plants and offices throughout the United States, Negroes and whites, Jews and Catholics and Protestants, Irishmen and Italians and Mexican Americans, all work side by side without discord. Wherever management has established a firm policy of merit employment, the results have almost invariably been salutary.

Obviously, the problem of employment discrimination is still far from solved. There remain many areas and occupations where minority-group members, especially Negroes, encounter barriers. Unions and management alike have been guilty of discriminatory practices. Qualified Negroes often find it difficult to move up the promotional ladder.

In recent years, however, job opportunities open to minorities have expanded markedly. Indeed, in several occupations and industries the emphasis has shifted somewhat from the elimination of discriminatory obstacles to the training of minority-group members for available jobs. Because of previous employment patterns and other reasons, minority-group members frequently limit their search to the "traditional" occupations and industries. Counselors and parents alike sometimes tend to discourage minority-group youngsters from educating themselves for those occupations which historically have been closed to them. It is important that youngsters be informed of job opportunities and trained to take advantage of them. Otherwise, as new areas of opportunity open up for Negroes and others, the number of trained or experienced applicants may fall considerably short of the ever increasing demand.

Many public and private organizations are now active in the campaign for merit employment. Their efforts are mainly in two directions: to break down the remaining racial or religious barriers set up by business, unions, or government, and to increase the availability of trained applicants for new jobs. Government agencies, such as the various FEP commissions, and private organizations seek to induce employers and unions, chiefly by persuasion and mediation, to abandon any discriminatory practices. Approaching the problem from a different angle, they also work with secondary-school and college counselors in improving the training and motivation of minority-group youngsters.

While most of the examples used in this book illustrate anti-Negro discrimination, due largely to the abundance of literature on this subject, many other groups, notably Jews, Mexican Americans, Puerto Ricans, and Orientals, encounter frequent denial of job opportunity because of race, religion, or national origin. Unquestionably, however, the Negro still confronts the most difficult obstacles. Progress is being made, but much remains to be done in the employment of Negroes in clerical, professional, sales, supervisory, and administrative jobs on the basis of their merit as individuals.



Of decisive importance, throughout much of American industry, is the policy of top management. When the executive staff of an enterprise lays down a firm and clear program of merit employment, providing complete equality of treatment without double standards, opposition usually melts away and the transition is smooth. It is important that all supervisors understand the policy and administer it effectively regardless of any personal feelings.

The ease with which the transition is effected may depend largely on the impression made by the first minority-group employees upon the rest of the personnel. Quite often the employer takes special precautions in hiring the "pioneer" workers, so that personality and appearance will be pleasing and attractive. After that, each employee is "on his own," judged only on his or her abilities on the job.

The prospects for further progress in the employment field are bright. With a scarcity of skilled labor, many employers are tapping new sources of manpower formerly excluded from their work force. Further, both the moral pressure of public opinion and the legal pressure of governmental policy give added momentum to the drive for merit employment. Nor does nondiscrimination in employment meet with the strong resistance often directed against integration in education, housing, and, particularly, social relationships. Relatively few workers are inclined to defy their employer or quit their jobs in protest against a nondiscriminatory policy.

One major value of merit employment is that the contact among members of different races and religions in the plant or office is likely to counteract many harmful stereotypes and thereby improve intergroup relations in general. Workers who befriend Negroes, Puerto Ricans, Mexican Americans, Catholics, and Jews at work are unlikely to give further credence to the "old wives' tales" so frequently circulated about these groups. When this occurs, prejudice finally gives way to understanding and friendship.

IX. Suggestions for Further Reading

THERE IS A VAST AMOUNT of literature on the general subject of prejudice and discrimination in America, and only a few of the more prominent and useful publications can be listed here.

A comprehensive general discussion of the role of minorities in American society is contained in *Racial and Cultural Minorities* by George E. Simpson and J. Milton Yinger (rev. ed.; New York: Harper, 1958). The classic work on anti-Negro prejudice in the United States is *An American Dilemma*, 2 vols. (new ed.; New York: Harper, 1962), written by the noted Swedish economist Gunnar Myrdal. The major findings of Myrdal's study have been summarized in *The Negro in America* by Arnold Rose (New York: Harper, 1948). A general analysis of prejudice may be found in *The Nature of Prejudice* by Gordon Allport (New York: Doubleday & Company, 1958).

A recent general study of American Jews is *The Jews: Social Patterns of an American Group*, edited by Marshall Sklare (Glencoe, Ill.: The Free Press, 1958). Many studies of anti-Semitism in the United States, and of prejudice in general, have been published by the Anti-Defamation League of B'nai B'rith and by other organizations of the Jewish community.

The Report of President Truman's Committee on Civil Rights is entitled *To Secure These Rights* (Washington, D.C.: Government Printing Office, 1947), issued by the committee under the chairmanship of Charles E. Wilson.

A study of Negro manpower in the United States may be found in *The Negro Potential* by Eli Ginzberg (New York: Columbia University Press, 1956), which summarizes the findings of extensive research conducted by the Conservation of Human Resources Project at Columbia University.

A new and especially valuable study of fair employment practices legislation and policies is *Toward Fair Employment* by Paul H. Norgren and Samuel E. Hill (New York: Columbia University Press, 1964). Professor Norgren and his associates had earlier conducted an excellent study of management experience with the employment of Negroes, summarizing the findings of a survey conducted by Industrial Relations Counselors. Results are published in *Employing the Negro in American Industry* (New York: Industrial Relations Counselors, Inc., 1959).

The Institute of Industrial Relations at UCLA has published a number of studies in the area of minority-group employment and education, all of which are available from the Institute in reprint form. Among them are "Combating Discrimination in Employment" by Paul Bullock (*California Management Review,* Summer, 1961); "The Minority Child and the Schools" by Paul Bullock and Robert Singleton (*The Progressive,* November, 1962); "What to Do with the Drop-out?" by Paul Bullock and Robert Singleton (*New Republic,* October 20, 1962); "Some Problems in Minority-Group Education in the Los Angeles Public Schools" by Robert Singleton and Paul Bullock (*The Journal of Negro Education,* Spring, 1963); and "Employment Problems of the Mexican American" by Paul Bullock (*Industrial Relations,* March, 1964).

A great many books on various aspects of discrimination and race relations in this country have been published in the past few years. Among those noteworthy are: *Crisis in Black and White* by Charles E. Silberman (New York: Random House, 1964); *To Be Equal* by Whitney M. Young, Jr. (New York: Harper, 1964); and *The New Equality* by Nat Hentoff (New York: Viking Press, 1964). Much valuable statistical data on Negro-white income differentials and related subjects may be found in *Rich Man, Poor Man* by Herman P. Miller (New York: Crowell, 1964).

A study of the New York law against discrimination may be found in *Equality by Statute* by Morroe Berger (New York: Columbia University Press, 1952). The wartime Fair Employment Practice Committee of the federal government is discussed in *All Manner of Men* by Malcolm Ross (New York: Reynal and Hitchcock, 1948).

The National Planning Association has published *Selected Studies of Negro Employment in the South,* for example, "Negro Employment in Three Southern Plants of International Harvester Company" by John Hope II, Case Study No. 1, 153. Mr. Hope has also prepared an analysis of the antidiscrimination program of the United Packinghouse Workers of America, and a survey of employment practices in the meat-packing industry, entitled *Equality of Opportunity* (Washington, D.C.: Public Affairs Press, 1956).

The National Conference of Christians and Jews has issued a number of pamphlets on merit employment, including *The High Cost of Discrimination* by Elmo Roper; *A Fair Chance for All Americans,* which contains statements by four business leaders; and *Negroes in the Work Group* by Jacob Seidenberg.

The National Foremen's Institute has published a pamphlet, entitled *Why?*, which provides a simplified guide for supervisors in implementing a merit-employment policy.

The National Association for the Advancement of Colored People has published a number of valuable studies, for example, *The Negro Wage-Earner and Apprenticeship Training Programs.* The National Urban League, the AFL-CIO, and other organizations listed in Chapter VI of this book issue material on discrimination both in general and with particular reference to employment. The National Association of Intergroup Relations Officials publishes annual reports summarizing the activities of public and private agencies in combating discrimination.

Finally, the various federal and state antidiscrimination agencies distribute a great deal of information on merit employment. Particularly useful are the special studies prepared by the New York State Commission for Human Rights.

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